

No. 10989

United States
Circuit Court of Appeals
For the Ninth Circuit.

JACOB MORRIS DANZIGER, TRINIDAD INTERNATIONAL PETROLEUM, LTD., and
WAKE DEVELOPMENT COMPANY,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record
In Four Volumes
Volume IV
Pages 1411 to 1848

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

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Los Angeles, California,

Tuesday, January 30, 1945, 10:00 a. m.

Te Clerk: United States vs. Danziger.

Mr. Lucas: Ready for the government.

Mr. Rose: Your Honor, I observe the presence in the court room, at this stage of the proceedings, of the party known as Warren in this case, and Carter, and so forth.

I feel now that the government has rested that there is no occasion for him being present, and any remarks that I may address to the court in connection with this matter—that he, necessarily, should be excluded at this stage of the proceedings. He is not essential, he is not a party on trial, so I don't think it would be proper for him to be present and listen to and observe the theories of the matters that are before the court, and any observations that I may make on them; and I ask your Honor that he be excluded at this stage of the proceedings.

The Court: I am not clear about my right to exclude anybody from a criminal trial.

Mr. Rose: His status, your Honor, in the highest degree that it can be given in this proceeding, in view of the record——

The Court: It doesn't make a bit of difference to me. Does it to you, Mr. Lucas?

Mr. Lucas: No, your Honor, personally; but I think it would be a grave error of the court, upon the request of [1129] anybody, to exclude a man who is on trial. The law provides he shall be present at all stages of any proceedings where proceed-

ings are going on that might be taken against him. Therefore, he has not only the right, but his presence is imperative and necessary under the law, in my view.

Mr. Rose: You contend, counsel, that he is on trial in this proceeding?

Mr. Lucas: I say that proceedings are being taken against him in the course of this matter here, and he does not occupy the status even of a witness.

The Court: Well, this is clear, unless the United States attorney were in agreement—and apparently he is not—that it would be within my province to exclude the defendant named, I must decline the request.

Mr. Rose: At this time, your Honor, I would desire to address a series of motions to the court.

The first motion that I submit to your Honor is a motion to quash the return of service of the so-called summons and citation addressed against the Trinidad International Petroleum, Ltd., a Nevada corporation, named as a defendant in this indictment, upon the ground that it affirmatively appears by the records and proceedings and the proofs herein that no arraignment of said defendant was had as provided by law. That is, the only proof in support of the arraignment culminating in the plea, ostensibly, in behalf of said defendant, is the return of a deputy marshal of [1130] this district asserting that he left a certain citation with a stenographer in the law offices of J. M. Danziger.

I submit that this is not such service as is provided by statute or by the law; and while I recog-

nize that this court, where a defendant regularly appearing before it stands mute and declines to plea, may very well, in fact the law provides that a plea of not guilty be interposed in behalf of the mute defendant who is properly before the court, I have been placed in the position of representing this defendant by a direction of the court.

Your Honor, undoubtedly, I recognize has the right to appoint counsel who are admitted as attorneys to practice law before this court to represent defendants who are before this court who are not represented by counsel; but I think I would be remiss in my responsibilities and duties in this proceeding if I were not to seriously and urgently present the motion that I am now making in behalf of this defendant.

The Court: Do you care to be heard on that, Mr. Lucas?

Mr. Lucas: What is that, your Honor?

The Court: Do you care to be heard on this motion?

Mr. Lucas: Other than this, your Honor, to say that the matter has previously been presented to the court, not in the exact words of a motion to quash the proceedings or quash the plea, but the matter was taken before the court, preliminary to the trial, and entirely gone into, and I [1131] would call the court's attention to the additional and subsequent facts that occurred in the trial which the court did not have before it at the time of the trial.

We have now, in the course of the proceeding, read into the record the sworn testimony of Jacob

Danziger, the individual defendant here, wherein he has outlined the status of the Trinidad International Petroleum Corporation, saying that he is president and chairman of the board of that corporation. We have introduced its articles of incorporation showing the place of its incorporation. His testimony shows that he is the dominant factor of that corporation, its sole and only active officer in this country, so far as the record showed. Therefore the motion to quash has no basis in substantiality. There has been considerable relaxation of the rule and heretofore obtained in common law by an arraignment. We threshed that out substantially as to the defendant Danziger prior to this case being assigned to this particular court for trial. The arraignment is merely the formal proceeding whereby the proceedings are started and a defendant is noticed or warned that proceedings are had against him. So, in this instance I can see no occasion whatever in the record, or otherwise, for the granting of a motion to quash the return.

Mr. Rose: In that connection, your Honor, counsel seems to overlook, in connection with evidentiary matter, the important element of time and the legal implications of [1132] corporate identity. He is trying to urge, your Honor, that because Mr. Mainland during the *month* of 1941, at a period long prior to the filing of this indictment, asked a particular witness whether he was an officer of the corporation, that therefore your Honor must assume, in the absence of evidence, that he was an officer three years later or more than three years

later, at the time of this attempt to arraign this defendant, this corporate defendant on trial, that your Honor can infer that because one was an officer at one time, therefore he must, necessarily, be an officer at another time.

The point is there was no attempt made, in fact, as provided by law, to arraign that corporate defendant even through Mr. Danziger. Now, the fact of the matter is that despite counsel's motions to the contrary, namely, that because one says, "I am the dominant figure in this company," that that is important, and that that, in fact, disposes of all the law that is built up around a corporate entity, a corporation, as your Honor well recognizes, is a creature of the law and functions through a body. The minutes of this particular corporate defendant are before the court, and it shows that there are a group of officers. Wherever the Trinidad stationery has found its way into this record, your Honor will observe there has been a president, a vice-president, there have been secretaries, and other officers; and I submit that what counsel is [1133] talking about, namely, that there has been a relaxation in respect to the subject of arraignment, that merely means that the courts have recognized if a person or corporation has been properly brought before the court and there hasn't been the formality with which arraignments were formerly made preliminary to a plea, that the court will not per se regard that as bringing about a miscarriage of justice. But the situation I am addressing to your Honor is more comprehensive than that. We have

an entirely different situation here. I am, by direction of your Honor, representing a corporate defendant that did not engage me, and I, as an officer of this court, respectfully submit, from the information I have at this time, that Mr. Danziger, in fact, is not an officer of the Trinidad corporation nor was he at the time that this proceeding commenced, that is, the trial of this action.

The Court: Mr. Rose, I will reserve decision on the motion until I hear the whole discussion.

Mr. Rose: Your Honor recognizes why I feel it my duty to present this motion, because as I remember, I can't remember the case, your Honor—your Honor undoubtedly does—in which your Honor wrote a decision in which you distinguished the difference between the proceeding against the corporation and its officers, and I think your Honor indicated in that decision, as I recall it, that the better practice would even be to indict them separately, as I [1134] remember that decision. Does your Honor recall that? It was some kind of a steamship case. A captain was involved, and your Honor pointed out not only are the individual defendants and the corporate defendants separate and apart, but you actually advocated, I think it was sound law——

The Court: Mr. Rose, you shouldn't be looking into my record that way.

Mr. Rose: Frankly, why shouldn't I, your Honor? The best expression I could find on the subjects that we are involved in here would be to find out whether your Honor has previously written

a decision on some of these topics, and I didn't have enough time, but I did, your Honor, attempt to find such cases as were available that your Honor had passed on, and I recall in the course of that research that particular case that I have reference to.

The Court: I will reserve decision, Mr. Rose.

Mr. Rose: Now, your Honor, may it be deemed, in behalf of expediency, that I am directing the same motion on the same ground and on each of the conditions submitted to the court in my motion, a similar motion in behalf of the corporate defendant Wake Development Company, a Delaware corporation.

The Court: I will reserve decision as to that.

Mr. Rose: Very well. Now, your Honor, going over this indictment here I have been rather in a quandary in certain respects to determine, in part, at least the theory of the [1135] government's case. Your Honor will recall toward the closing phases of this case, just within a few days before the end of last week, your Honor addressed to opposing counsel a question concerning his theory of this conspiracy. On other occasions your Honor has asked him when he thought this conspiracy formed.

As your Honor observes from the record before you, I find this to be the case: The undisputed evidence in this case shows that the indictment in this case in the various counts were procured solely upon the testimony of Mr. Mainland and Miss Skinner, as I remember it, who was present in court here. As your Honor remembers, Miss Skinner testified that this Mr. Warren approached her and told her

something about an oil speculation in New Mexico. Then you have the hearsay of Mr. Mainland. In other words, the indictment in this case was not brought about by the valuable testimony of this paragon of virtue, Mr. Warren, who has come forward here, after his apprehension, but it was in the main based upon surmise, speculation and conjecture.

I was placed in the peculiar position in this case, your Honor, having been brought into it some three years after the indictment was returned and filed, and having taken the legal position that was addressed to your Honor in the incipency of your connection with this matter, I was placed in the position of opposing any proceedings on the theory that the court was without jurisdiction after this long [1136] delay, and in view of the intervening circumstances to proceed at all as against the defendant Mr. Danziger. At that time I was not appearing on behalf of the corporate defendants. Having assumed that position, I could not, paradoxically, your Honor, interpose any plea in the form of a dilatory plea. But, I submit that it now appears, at the conclusion of the government's case, that this indictment was procured contrary to all legal concepts and principles, namely, the various and several counts of this indictment could not, possibly, according to established principles of law, be properly returned on this hearsay and the flimsy testimony of Miss Skinner.

In the normal course of events, had this case progressed along the usual or normal lines, namely, the

defendant is brought in shortly after his indictment and is required to join issue, I submit to your Honor I would have made a motion to quash the indictment on the ground that it was procured illegally and contrary to the laws of the United States. It was procured purely on hearsay and on unsubstantial evidence to warrant and support the indictment.

For that reason, now that these facts appear evident at the conclusion of the government's case, I address to your Honor a motion to quash the indictment upon the grounds that the same was procured contrary to the laws of the United States, in violation of the constitutional provisos, namely, due process, the equal protections of the law and the [1137] statutes in cases concerning the subject of the requisite evidence and character of evidence that is essentially required in order to vote an indictment against an accused and put him to trial.

The Court: Mr. Lucas, I will hear you.

Mr. Lucas: I don't care to be heard unless your Honor wants me to be heard. First, the government's theory is that a motion to quash the indictment, as announced and argued by counsel for the defendant, raises no substantial question that this court can pass upon at this time. All matters occurring before the grand jury, and anything antecedent to the indictment, must be raised either at the time of plea or prior thereto. The question of who testified before the grand jury and who didn't are all questions that cannot be raised.

The Court: At all?

Mr. Lucas: At this time. And if raised must

be raised in a different manner than it is here attempted to be raised.

The Court: What manner?

Mr. Lucas: The mere fact that the witness has testified here, Mr. Mainland and Miss Skinner, that they were persons who testified before the grand jury, does not work a constitutional defect in any manner, or deprive this defendant or any of the defendants of their constitutional rights. That is all that there is before this court, I think, some [1138] few words by Mr. Mainland, under cross examination by counsel, and some few words by Miss Skinner, as to her testimony before the grand jury.

The Court: Have somebody get us a copy of the new rules of federal criminal procedure. There are many of them in the building; they have been sent here just since I came down, in January, the final draft.

Mr. Lucas: I have not got that yet.

The Court: Every judge in the building has one, if you will have somebody get the last and final draft of the federal rules of criminal procedure. Every secretary has one.

Mr. Lucas: I have just asked Mr. Mainland to step in to Judge Harrison's secretary and get their copy.

The Court: The final draft, Mr. Mainland, not any preliminary draft.

I will reserve decision on the motion.

Mr. Rose: Your Honor, I have made a little outline of the various counts of this indictment

here. Now, I find, for example, in the first count that the defendants are jointly charged as having devised and intended to devise a scheme to cheat a class of persons, and then they refer to the stockholders of the Great Eastern Gas Company, and then of several mining companies, naming them. Now, they proceed to outline the fraudulent pretenses, promises and representations concerning the Trinidad International Petroleum [1139] securities, its operations and personnel was fraudulent. Then they state that among the scheme outlined was to misrepresent that the stock was listed and traded on the Stock Exchange in London.

While I am on this one point, I will make my observation; that they haven't even proved or pretended to prove that the stock, in fact, was not listed or traded on the Stock Exchange of London. And in that connection, I submit, your Honor, that there isn't a scintilla of proof that Mr. Danziger or the two corporate defendants ever represented to any one, either by way of voice or by way of a document, that the stocks were in fact listed.

We, of course, know from Mr. Warren, Carter, and what-have-you, that he told some of these people that the stock was listed. But he doesn't claim or pretend to claim that he was ever told by any of the other defendants on trial that he was directed to make any such representation.

So we have before us what? We have, firstly, the failure on the part of the prosecution to establish that the stock wasn't, in fact, listed. In so far as the corporate defendants are concerned in each

and every instance there is a letter on file that the stock was never listed. So, so far as any representation on the part of the defendants on trial, there is an utter failure to prove.

The Court: What is the letter you referred to?

Mr. Rose: Your Honor will remember in this group of [1140] letters that was sent on to some of these stockholders here, the letter in each instance specifically declares that the stock was not listed. Does your Honor remember that?

The Court: If you say it is there, why——

Mr. Rose: Yes, your Honor, in every instance, so far as the defendants on trial are concerned, the unqualified proof here is that they were informed that the T.I.P. stock has never been listed on any stock exchange, and the only time that it has ever been traded has been over the counter, so to speak, in the United States and England. That is the state of the record.

Now, the nebulous thing, as I remember it, in which this Mr. Warren was inclined to create an inference, was that, your Honor will remember, he said that while Mr. Danziger was in England he sent him a newspaper showing stock market quotations, and he wrote to him, "Well, you know how to use this." That is the extent to which this gentleman went. And I don't have to argue that; I am not going to try to argue, your Honor, what inference to draw from any of these matters. I just wanted to be sure that I present to your Honor, as I discuss these points, everything that is in the record.

I thought it my duty to call your Honor's attention to that nebulous little thing that is there.

Now, then, so far as the defendants on trial and the charge in the indictment that a scheme was devised, you [1141] find from the evidence here, even reversing the process that the law imposes upon us in a judicial proceeding, namely, to draw the inferences in favor of innocence and against the criminal intent, you find, one, that there is no evidence that in this alleged conspiracy prior to the leaving for England, and contrary to opposing counsel's contention that this scheme was planned long before Mr. Danziger left for England, you find neither in cross nor direct testimony on the part of Mr. Warren that there was any scheme or discussion respecting a representation that was to be made or ever considered to any prospective purchaser of stock that the stock was listed on the stock exchange, and, yet, this is listed as a part of the scheme, and you have no less representation to the court by Mr. Lucas that this so-called scheme and conspiracy, concerning which we have heard so much from him, originated prior to Mr. Danziger's departure for England.

Now, then, the second item, in line, in this so-called scheme was that Danziger was to receive the money for the securities or cause the corporation to receive the money and property sent in by the persons to be defrauded, and then distribute a part of it to defendants.

Now, what is the record in respect to the so-called scheme and conspiracy in 1935, prior to the de-

parture of Mr. Danziger? The record shows there was an agreement entered into which agreement must, presumptively, be deemed [1142] to have been according to law and not fraudulent. It wasn't an agreement between these two defendants; it was an agreement between the Great Eastern Gas Company, which they themselves have introduced, in writing. The agreement provided, and the evidence shows that the agreement was made between a brokerage firm and the Great Eastern Company in Delaware, in which 20,000 shares of the personally owned shares of stock of Wake Development Company were deposited in escrow, and when Mr. Danziger left for England the proceeds were to be handled in this escrow. So, contrary to the charge in this indictment, there never was an arrangement, so far as the undisputed and uncontradicted evidence up to this point in this case shows, that there was ever any such scheme as they outline here.

In other words, there was a valid agreement not between these defendants, but between the Great Eastern Company and its duly authorized representatives, not the co-defendants. The agreement, presumptively, they have introduced, and offered no evidence to the contrary, that it was entered into in good faith; there was an escrow made, and this escrow company in Delaware was delegated, and under the arrangements then existing and continuing to exist until long after the departure of Mr. Danziger to England this Delaware Company this trust company, were to handle the proceeds from this particular sale of Wake Development Company

personally owned stock. That is the state of the record in regard to the [1143] second so-called false pretense and scheme, which is controverted by their own evidence. They have introduced the agreement, they have developed in their testimony, through Mr. Warren, that an agreement was entered into not between Carter or the persons that they mention—and, incidentally, the government has left me in a quandary, I don't know how your Honor feels about it,—they name W. W. Wright and they name some others, they don't mention the Great Eastern Company or Dube or any of these persons, who were the parties to this agreement, and we don't know yet what omnibus fishing expedition they had in mind at that time when they politely voted the seventeen-count indictment. So I point out to your Honor that part of the scheme fails of any proof.

Now, I have noted the third. They say part of the scheme was to use fictitious names by persons calling on persons to be defrauded, and give them fictitious addresses. What is the state of the record, as I recall it, on that part of the scheme? Mr. Warren testified here that the first time he resorted to the use of fictitious names was after the Pierce transaction which occurred after the departure of Mr. Danziger to London, and your Honor will remember that exhibit that Mr. Warren admitted signing, that letter in which he wrote to Mr. Danziger protesting against the prompt cancellation of this whole deal. The undisputed evidence of these cablegrams from England, and the cable sent by Warren, incidentally, your Honor will remember

it is [1144] in evidence, was begging that the cancellation of this whole deal be set aside, and Mr. Warren who at that time tells us he was neutral, sends over to England that writing in the letter saying there was no necessity for any crooked work, this sale could have been made clean and there wouldn't have been any complaint, there could have been \$100,000 sold, and it shows what a warped mind will do.

I wonder what a warped mind is according to the mental processes of this individual?

But, in any event, he himself admits he was pure at that time, he admits it. So where is there any discussion——

The Court: You say he was neutral.

Mr. Rose: He says he was neutral. He said he left it neutral. I don't know what that means. But you notice he outlines there was no necessity in connection with \$100,000 of this stock that could be sold to one person, Mrs. Pierce, of doing it in anything but a clean manner. What does the state of the record show? The state of the record shows that at the first sign of any improper conduct Mr. Danziger repudiates and cancels the whole agreement. There it is at an end. The evidentiary record, the documentary record, clearly shows that. There can't be any argument about that, and he himself says that he didn't resort to the use of any fictitious names until 1936. So where have we anywhere in the record that segment of this so-called arch conspiracy? [1145]

Now, I made a note as to the fourth part of this

scheme. It says J. M. Danziger and the corporations would pretend they did not know the persons who had called on persons when they made inquiry of the company.

Now, my recollection is that it is Exhibit O, Defendant's Exhibit O, which Warren acknowledges sending, which shows that he wrote in November after Danziger had been in London for quite a while to Faulkner in the Wake Development Company, in which he begs to carry on and states that it will all be clean and there won't be any misrepresentations, and so forth.

Now, then, where is there any evidence, if opposing counsel's theory is to be given any consideration, that this conspiracy was something that occurred at the time he claims it occurred or at any other time? Where there are any agreements that these persons should use fictitious names, and that they should use false addresses and so forth? The fact of the matter is, as the record evidence shows, letters went out and they have introduced that, before and after Mr. Danziger's departure to England, on the letterhead of the Trinidad Corporation, outlining that an agreement had been entered into between Wake and the Trinidad Company, that is, between the Trinidad Company and the Great Eastern Company, in which they were to be given certain rights. The names of the personnel of the Trinidad Company are all outlined. In fact, there is a succinct declaration of their [1146] background antecedents and history, and their addresses, and, mind you, the escrow arrangement with the

Commonwealth Trust Company and the Great Eastern literature certainly gave their addresses, and even Warren who was so anxious to assist us here admits that he didn't use any fictitious name prior to 1936. So, where is there any evidence, be it so nebulous, that supports this fourth segment of the so-called scheme that counsel says occurred in '35?

Now, the fifth segment of this scheme. Your Honor, I will just show you how inconsistent these people are, and will show you they have just gone out with a bucket shop fire and show you you can't depend on them, they don't know themselves when this so-called conspiracy is presumed to have started. They say, for example, that a part of the scheme was for J. M. Danziger to use fictitious names in transmitting the funds to the other defendants. Now, in that connection, your Honor, what is the state of the record?

The state of the record is that the original plan, the Great Eastern Company received two-thirds of the proceeds, the escrow arrangement with the Commonwealth Trust Company, received two-thirds of the sale, that was the arrangement made preceding the going on of Mr. Danziger to England. Now, where is there any evidence that an agreement was entered into to transmit the funds? In 1940, and if my memory serves me, somewheres in December, 1940, there appears to have been another transmittal of some postal money orders [1147] and Western Union money orders to a man named Carlton. Now, they were transmitted, as your Honor remembers, under the name of "A. Levy" and in one instance

“T. Mack.” Now, that is something that occurred in 1940 to a man named Carlton.

Up to a change in the position taken by Warren, he testified, as I remember, that he never used the name Carlton prior to 1940. He may have used it in the latter part of '39. Now, there isn't a scintilla of evidence to show, even by the testimony of Warren, or Carter, or what-have-you, that he ever told anybody that he, Carter, Warren, or whatever he is, ever represented that he was Carlton to any of the defendants on trial.

So your Honor will see, as I pointed out to you, that this indictment and a lot of the allegations that are set forth in here, is a conglomeration of bits of surmise and conjecture.

I have no quarrel with Mr. Mainland; I think that this indictment and a lot of the allegations that are made; I commend the SEC for their work, they have done a very splendid work; but Mr. Mainland, in his zeal to follow through on this investigation into this corporation, as the record reflects, your Honor, ascertained that these transmittals of the postal money orders to Carlton, and the Western Union, were made, by reason of the examination here, as late as June, 1941. So that is the first time that Mr. Mainland in his checkup of these transactions finds out the bald fact that in [1148] 1940, in December, or thereabouts, a transmittal of money was made to Carlton in New York with the name of “A. Levy” in most of the instances, and in one instance the name of “T. Mack.”

So that fifth part of the scheme, if it was a scheme, couldn't possibly have come into being until 1940. The first time that any one who appeared before the grand jury—and it can't be Miss Skinner—that submitted that valuable piece of evidence to them, was Mr. Mainland's evidence or surmise as to what this so-called plan or scheme was, acquired by him in 1941, in June.

Now, that is the record in connection with that phase of the case. If I haven't made myself clear, your Honor, your Honor must keep in mind the '35 agreement was in escrow between the Great Eastern, and they were in agreement to receive the money, and they weren't to receive it in the name of Carlton; and I don't see the significance, although the prosecutors frequently attach great importance to the fact that a transmittal was made in the name of "Levy," or let it be Jones, or what-have you; they don't bother to find out why or how or the facts about it, but to them that is very significant.

I know that your Honor doesn't share that view, from a number of observations your Honor has made in the course of these proceedings, whether a person of that name exists or not. [1149]

Now, the sixth part of the scheme as I have noted here from my analysis of the indictment is that part of it that Danziger, Wake, and the Trinidad Company were to write to persons to be defrauded—no, when replying to persons, incidentally, not that had been already defrauded, but they use the language "to be defrauded"—we know what that means from

Hamlet—"would secretly submit such letters to the defendants who had called on them for the advice of such other defendants respecting the reply to be made."

Now, we have all the letters that reputedly were sent. We have them here twice, in duplicate, that is, the carbon copies, and we have the originals in many cases which were introduced by the stipulation, Mr. Mainland asserting that he received it from the addressee, and they are in evidence. Now, here again, according to the documentary evidence, we have no evidence that there was ever such agreement whatever. There is no discussion. Mr. Warren in his testimony outlining in his way the discussion of how this thing was to be handled has gone in at great length about this, and we find, apropos of opposing counsel's representation to your Honor that this scheme occurred in '35, we find here by undisputed proof that there wasn't any such program at all. The program was that \$20,000 of Wake's privately owned stock in the Trinidad Company was to be and was pursuant to an agreement deposited with a trust company in Delaware, by reason of an agreement in writing between the Great Eastern [1150] Gas Company and the Trinidad Company; hence, there isn't anything to this at all. If Carter or Warren or whatever he is wrote to Mrs. Faulkner in Los Angeles during the absence of Mr. Danziger in England, and it is not disputed he was there from I think September '35 to July '37, if any such arrangement was made that he was to get a copy of any letter,

that was an arrangement made which is left in the metaphysical realm, for the reason that there is nothing definite about it to indicate when that arrangement was made, and between whom; and of what criminal significance is it that a copy of any letters sent to any inquirer was sent to the Great Eastern or its representative? The evidence as developed up to yesterday shows that the Great Eastern still had an office in 1940 in New York City in the Longacre Building, to which communications were addressed.

So, your Honor will see that here, again, counsel for the government is not sure of his ground at all when he told your Honor this conspiracy was formed, the one they claim culminating in this indictment, supposed to have been formed in 1935. And we know there wasn't any such arrangement whatsoever made, according to the oral testimony or any of the proofs in this record. So much for the sixth.

Now, the seventh item here says that part of the scheme was that J. M. Danziger and Wake and T. I. P. should appear to be reluctant to take the money and property of the persons to be defrauded.

Now, when did this phase of this jumpy scheme take place? I am in a quandary to know where the government contends that there is any evidence that that was part of the scheme. It is true that in two instances, as I recall, I think one of them is a Mrs. Lawyer, there are three letters that go to her in which the Wake Development Company turned her down, they tell her they don't want to make the deal. Now, those transactions are in '39 and

possibly in '40, I am not certain without examining them, but I am quite sure that those particular transactions in which the government has introduced correspondence shows that the Wake Company didn't advise, indicate to the persons making the inquiry, that they had any inclination or disposition to make the deal. So, when does this stage of the conspiracy that opposing counsel tells your Honor was generated in 1935, when does this come into being, and between whom?

Now, as I pointed out, I am not sure of the language, but I remember in the case of *People v. Blackman*, it is either in 124 or 127 Cal., one of our Supreme Court decisions, it stands out in my mind, that case in the discussion of documentary evidence points out that you do not introduce a document into evidence for the purpose of proving, in the absence of specific proof, that it doesn't mean what it says. In other words, of course, I can establish that a document is a forgery; but I would proceed to prove that the document is not what it is by evidence that it is a [1152] forgery. But if I offered in evidence to your Honor in this case a document, and if by that document I seek to prove criminal intent or purpose, I can't introduce that document and then merely say that in my opinion that letter is just a sham, it is a phony.

Here are a series of communications going over the course of a year, and the company says, "If you think this is anything but a highly speculative stock, don't buy it. We advise you against it."

Now, when did that part of the scheme, so-called,

come into being? The letters that they refer to are letters in '39 and '40, so could that possibly have been the part of the conspiracy that opposing counsel tells your Honor occurred in '35, or for that matter in '37?

Those are the only two occasions when Mr. Warren, Carter, and so forth, ever met Mr. Danziger.

Incidentally, in passing, while I am thinking about this thing, what does it show your Honor? It shows he saw him a few times before he left for England in '35. He never even so much as had lunch with him or went out together. Can you imagine a couple of henchmen of his ilk, conspirators, who don't even go out and have a cup of coffee together or something? And then when does he meet him again? Twice or three times in '37 upon his return from England, at which time he tells him that he has been convicted in Illinois.

The Court: You break the morning to suit yourself. It [1153] is now 11:00 o'clock.

Mr. Rose: It is all right, your Honor, I am not reading anything. I am just referring to a note of parts of the indictment, so your Honor can take the recess now, if you will.

(A short recess was taken.)

Mr. Rose: Now, your Honor, the next item that I notice that is a segment of the indictment is the contention that part of the scheme was to use the mails and telephone and telegraph in dealing with the persons to be defrauded, and with each other.

Now, that is a rather vague and ephemeral allegation. We do know that the agreement which the

government has introduced in evidence provided that the Great Eastern Gas Company were to circularize their stockholders, advise them about the arrangement made with the Trinidad Company, and offer to them a right.

Now, as I pointed out, no evidence was even sought to be presented that that agreement was a bona fide and legitimate agreement between Great Eastern and Trinidad. Now, the use of that mail and the exercise of that right couldn't possibly be given any criminal significance. So this generalization is meaningless. As far as the telephone is concerned, nobody has come forward and said that Mr. Danziger or any representative of Trinidad or the Wake Development Company ever advised any salesman, "You go to a [1154] telephone and you tell that person a pack of fabrications."

We know that the telephone was resorted to surreptitiously by one Warren in this case; but even he has not assayed to tell your Honor that he ever received any such instructions from any of the defendants.

If this was part of the scheme, when did this segment of the scheme come into being? Certainly when Mr. Danziger left for England, as I have pointed out before, there is not a shred of evidence that any such scheme was even discussed or outlined.

So, as I say, this allegation is one of these generalizations that doesn't tell us anything.

In other words, I want to make it clear that I don't condone some of this reprehensible conduct

on the part of the defendant, or former defendant Warren, in this voluntary resort to this tricky activity on his part in telephoning to some of the persons we know he did, according to the persons' testimony and his own.

Now, these are things that occurred, again, in '38 and '39. Now, when did this part of the conspiracy, if it is a part of the conspiracy, come into being, and how was it brought about? There isn't anything here to help us or assist us on that part.

Now, following these specific outlinings of the so-called scheme, there is an enumeration of the representations. [1155]

The first is: T.I.P. owned valuable oil lands in Trinidad, New Mexico, and producing oil from its properties, had commercial wells thereon, and was in prosperous condition.

What is the state of the record in connection with these so-called representations? We do know, your Honor, that Warren, according to his confession in open court, and according to the testimony of two witnesses, at least, that came in here, did make statements in connection with some of the phases of the outline that I have just referred to. But what is the record evidence? The prosecution as late as yesterday introduced into evidence an exhibit produced from Warren or by him outlining the status of the Trinidad Company. The evidence shows that in the discussions with Danziger he had come there to New York to make some preliminary arrangements, and then went to England for the purpose of making arrangements for finances. Where does the

government contend that the defendants who are on trial now ever told Warren or anybody else that they were producing oil?

There is a prospectus that has been introduced into evidence. The S.E.C. had authorized the sale of 200,000 shares of that company's stock at \$5 par. The evidence of all documents shown and the discussions up to the time of Mr. Danziger's departure for England, show that the only representation made so far as any defendant or its representative [1156] are concerned, at that time, concerning the condition of finances of the company, were correct and true. There wasn't any discussion about misrepresenting them. As a matter of fact, the record shows that they hadn't any funds. That is what they were trying to raise. They had applied for permission to raise it in a lawful and proper manner. And so far as the fact that the T.I.P. had valuable oil land, there isn't a word of evidence in this case to the contrary.

I would like opposing counsel here to point out to your Honor where he has introduced anything that may be considered in the guise of evidence either oral or documentary that the Trinidad International Petroleum is not, perhaps, one of the most outstanding potential oil developments in the world. He hasn't produced any evidence.

I asked Mr. Mainland, "Did you ever find in your investigation"—and I was pretty broad—"did you ever find that that British geologist"—Craig, I think is his name—"who is considered one of the most distinguished geologists in the world, did you ever find that man's report on the Trinidad Inter-

national Petroleum lands was inaccurate?" And he said, "No, I never found anything to the contrary."

"Did you ever find out that they didn't have a couple of oil wells on there which were not in operation?" He said, "No."

Then what are we to do? Are we to assume, your Honor, [1157] —and, apparently, that is what opposing counsel has in mind, we are assume that just because he prefers to think so, that this Trinidad International Petroleum Company is a hoax; and yet it is not disputed in the files and records of the S.E.C., and Mr. Mainland admitted he didn't find anything to the contrary, there had been a half a million dollars put into this project before Danziger, the Wake Development Company, or Trinidad International Petroleum even takes hold of it.

The leases displayed to Mr. Warren, the so-called, shall I say front or rear end of the so-called conspiracy, are in evidence. He says they were shown to him. Now, they speak for themselves.

Now, if your Honor will outline—where is that, one of the last prosecution exhibits that came in here last night?

Here your Honor, as a part of Exhibit 112—and they have introduced that—is the "Information for company representatives relating to offer of Wake Development Company of shares and notes of Trinidad International Petroleum, Ltd.," and your Honor will see what the representations are. And it is the undisputed evidence that this is the thing that was handed to Mr. Warren, and that will tell you what representations were made.

As I say, your Honor, this is sheer speculation. So far as this court knows, so far as any one knows, from the [1158] record evidence here, we have a geologist's report, who is reputed—and it is not disputed—to be one of the most eminent geologists in the world, he gives a report on these lands, he reports on the character of oil that is prevalent there, he reports on the fact that there are a couple of wells on there.

Now, who told Warren or anybody else that they were pumping oil? I would like opposing counsel to tell me who assertedly testified that such representation was ever made by any of the defendants on trial.

I don't know what this man Warren may have told some of these people. He may have told him that they had gushers on there. But where do we fit in in that representation? So far as——

The Court: Mr. Rose, I am having the clerk hand you an exhibit, Exhibit 88. There is a very large figure there used as having previously been expended on the property. I thought at the time that might have been a mistake. It says seven and a half million dollars, as I read it.

Mr. Rose: Your Honor, I don't know.

I am informed, your Honor, in regard to this situation, that the half a million dollars referred to has been spent in drilling and such operations, but the British interests who had acquired this aggregation of some 200 parcels of land had actually invested in excess of six million dollars in the course of acquisition of those lands. [1159]

Now, in connection with that matter, your Honor—I am glad your Honor calls my attention to it—there has been no testimony about this particular letter on the part of any one here. There has been no testimony about it. Now, on what hypothesis can we assume, your Honor, that that statement is not true? Did the government come forward with any person to even venture an opinion?

Incidentally, I asked Mr. Mainland in the course of his investigation—and, incidentally, your Honor, this file was part of the papers in his custody, this was part of the record in Mr. Mainland's custody, acting for the S.E.C.—I asked him if he ever discovered that any representation about money that had been invested in that company, or the values of those lands, if any representations had ever been found to be false, and he said no.

This is your situation. I think somewhere in the record you will find that \$5,000 was paid for just the report by Craig, this geologist in England.

In the course of this long, rambling recital on the part of the witness Warren, your Honor, he has shown definitely, I am satisfied, that he wasn't privy to the merits of this transaction at all. So far as I can diagnose his characteristics, he doesn't even seem to be interested or concerned.

I don't think if you gave him American Telegraph and Telephone Company stock that he would go out and sell it [1160] without some exaggeration. I don't think he could, from what I have observed about him in court here.

Your Honor, incidentally, in the course of some

questions addressed to him asked him about this prophetic declaration in one of these communications here way back in 1938 about a possible closing of the Mediterranean, and he didn't comprehend what your Honor was even talking about. Now, this letter——

The Court: Maybe nobody else did.

Mr. Rose: Oh, no. The point is that that was something in the minds—if your Honor doesn't think that these British people and Mr. Danziger anticipated a possibility of that, you are in error. That is why they were——

The Court: I was just referring to my——

Mr. Rose: That merely indicates to my mind he wasn't privy to what was going on, nor did he care. For example, he doesn't profess to have ever discussed this subject of how much money had found its way into this project at any previous occasion. He does say that Mr. Danziger always spoke highly of these lands. He still does. But my point is where is there any evidence to raise an inference or presumption that the lands weren't, in fact, very valuable lands?

As I pointed out, in so far as the so-called conspiracy, he was never told or authorized, in going out to sell part of this G. E. escrow stock, or any other stock, to go out [1161] and make statements that they had commercial wells, and so forth, and were in so forth and so forth condition.

In the argumentative denials, having built up their straw men in the indictment, they then proceed argumentatively to deny them. They say that

contrary to the facts the rights were of no value.

What is the state of the record in regard to whether the rights were of value? Is there any evidence that they weren't of value? These persons who allegedly were hoodwinked and defrauded, in the main, so far as I can recall, paid \$3 for \$5 par stock and received the \$5 preferential note. The testimony so far as we know is that the Great Eastern Gas Company stock was of no value. That is their charge and that is their contention, and we don't take any issue with them on that. Now, on what assumption can the government claim that the rights were of no value, having failed to even take the trouble to find out the potential value and the potential value that the stock may acquire or could acquire?

As your Honor will notice, nobody returned the stock. So far as the record shows, they are still hanging on to it. They were picked up here by the government at their request in connection with their investigation; but there was no surrender made of it, or even, for that matter, an offer of surrender.

Now, the agreement introduced in evidence here between [1162] the Great Eastern Company for the issuance of those rights was an agreement that was entered into bona fide with an escrow and so forth, and we cannot assume that the rights were or are of no value. There isn't any evidence to that effect, even in opinion.

We do know that there was no discussion asserted to be had between Mr. Danziger or any rep-

representative of the corporate defendants with any other person that the stock was, in fact, listed on the London stock exchange.

I can point out to your Honor in every letter that went over to any one of these persons that there is an unqualified and definite declaration that it is not listed and never has been.

Shall I point that out to your Honor?

The Court: Yes, if you wish.

Mr. Rose: "These notes are not listed and are traded over the counter. We have been advised that sales have been made during the past year, prices ranging from 12 to 20 shillings or the equivalent of 3 to 5 dollars American money."

Your Honor will find that representation on the Wake letterhead to these persons who were asserted to be defrauded in every instance. They are specifically advised that they are not listed.

I do not try to state to your Honor that Warren or Carter or his henchmen did not tell these people that they [1163] were listed; but I say where is there any evidence that we were a party to that or ever agreed to it? That is the point I am urging. They don't claim that we ever stated that it was listed on the stock exchange.

I can show you letter after letter, the minute that question comes up, without equivocation, without any hedging, any person who made inquiry respecting this Trinidad stock was told that the stock had never been listed on the stock exchange. And as far as the price is concerned, no representation is made that it ever brought any more than the par.

That is the point that I want to point out to your Honor. They say the representation of listing in London. That representation was made by these connivers and contrivers who were acting in cahoots with Mr. Warren. But I want to know where is there any testimony that we were ever privy to that, or ever even discussed it,—when our letters definitely show that it was not listed.

There is the other phase which I think is a detestable thing: that trick that Warren seemed to be so proud of it in calling on some of these persons, telling them that he was a representative of some Sterling Company in Canada who were interested in buying up the preferential notes at a higher price than the par, or something to that effect. We know he did it. He confesses he did. But where is there any evidence that we, the defendants on trial, were ever particeps criminis, or participated, or even were privy to [1164] such thing?

As a matter of fact, you will find in the documentary evidence on trial that wherever that question came up we denounced it and repudiated it and made it quite clear that no such representation was ever authorized.

As I say, although that misconduct, and I certainly confess that it is, that strategem resorted to on the part of Mr. Warren and his henchmen is not to be condoned, nor is he to be applauded for it, where does the government contend that we, assertedly, entered into a conspiracy of that type, and when did we do it?

There is that reference to the fact that a note was

sent in 1940 to be signed by Mrs. Parsons for the balance due for the certificate.

That about concludes an analysis and diagnosis of count 1.

I respectfully submit to your Honor, so far as I can glean from the most impartial approach to a consideration of the evidence in this case, where is there anything to uphold any one of these segments of this so-called conspiracy?

You will find as we review the evidence in this record up to the present time that something of this character that is hinted upon in here occurred in 1940 for the first time, something occurred in '39, something of that character occurred in one instance in '38; but if the government's representation to your Honor is correct that this conspiracy [1165] charged in the indictment was formulated in 1935, how can we reconcile these divergent plans in the face of the fact that even Warren doesn't confess that he ever discussed with any of the defendants or their representatives on trial the subject of resorting to the tricks and devices that he employed?

The Court: May I ask you a question now? Your plan, I take it, is to make a complete argument, as you have been doing on count 1, as to all of the counts? You are going to state another motion pretty soon?

Mr. Rose: Yes.

The Court: Your plan is to make a complete argument as to all of the counts at this time?

Mr. Rose: That's right.

The Court: That would call upon you to make a full statement of the government's position, Mr. Lucas, and I would like for you to be prepared to follow Mr. Rose as he concludes as to each count. Do you see what I mean?

Mr. Lucas: Yes, I shall try to follow that.

The Court: That is what I am going to have you do. Instead of hearing Mr. Rose clear through on all of the 17 counts and then hear you in answer to them, when he finishes, as he appears to be doing now, his discussion about count 1, then I will want you to answer, as however you think it should be answered, his discussion up to that point. [1166]

Mr. Lucas: Yes.

The Court: Then I will hear him again and then I will hear you again.

Mr. Lucas: Very well.

The Court: And so on through the 17 counts of the indictment.

Mr. Lucas: I have been listening very carefully to Mr. Rose——

The Court: He hasn't finished.

Mr. Lucas: It was only in the last two or three minutes that I discovered that he was talking about count 1. I thought he was making a general resume.

The Court: I don't know that he is through. I saw you pulling yourself together like one does when they are being called on. I wanted you to know how I am going to split up this discussion, so you could plan accordingly.

You haven't finished?

Mr. Rose: If it is agreeable to your Honor, and

I think it is a very happy proposal and will expedite things, as to each count I am disposed to defer presenting the motion until the government indicates their position on the count.

The Court: No, no; I want you to state your full position as to each count separately.

Mr. Rose: Very well.

The Court: Incidentally, it will save you from wearing [1167] yourself out.

Mr. Rose: Your Honor, by reason of the matters and things that I have outlined to the court in an analysis of the allegations and the proofs in respect to the recitals, charges, allegations, contentions, set forth in count 1, and the evidence thereon, in behalf of the defendant J. M. Danziger, as an individual, I move that the same be quashed and dismissed upon the following grounds, severally: One, that it does not appear by the government's evidence that the defendant J. M. Danziger, individually and personally, participated in that degree requisite and required by law to bind him as an individual in any of the asserted acts supported by any of the proofs offered by the government of the divers acts and things charged in the first count of the indictment, and upon the ground that there is a failure of evidence of any competency to establish that the defendant J. M. Danziger individually, was privy to or actually participated in or personally authorized any of the acts shown by the evidence presented to this honorable court in support of count 1 of the indictment.

The Court: Now, complete your motions as to that count.

Mr. Rose: I, therefore, move that said count as to J. M. Danziger, personally as an individual, be quashed and annulled.

The Court: Now I will hear you, Mr. Lucas. I realize, [1168] of course, that the argument both of Mr. Rose and by you, Mr. Lucas, will be longest as to this count, because it involves a discussion of the major background to all of the counts, but we have 15 minutes, and you might just as well begin. [1169]

Mr. Lucas: Yes, your Honor. With respect to the motion to quash the indictment in its entirety on constitutional grounds, I would direct the court that, first, the motion to quash the indictment is not favored by the courts, although it does not want for statutory recognition.

Mr. Rose: Excuse the interruption, counsel. Maybe I am not oriented at the moment. You are going back to the motion that his Honor has already heard and has reserved the ruling on? As I understand it, his Honor has asked you to submit the government's position in connection with the motion addressed to count 1.

The Court: If he has some new ideas about your third motion, which is the one he is talking about now, numerically, I will be glad to hear him.

Mr. Lucas: I would like to touch upon it. I appreciate your Honor has indicated you are going to make some study of it yourself, but I would like to be heard briefly on it.

The Court: All right.

Mr. Lucas: First, the time for the motion, the

courts seem to be in accord that the motion to quash should be made as soon as possible after the return of the indictment and ordinarily before pleading to the indictment. They recognize, however, that where counsel has not had time prior to the arraignment to study the indictment or grand jury proceedings, that upon being compelled to plead, or at the time of arraignment they can ask permission to withdraw [1170] the plea for making the motion to quash. However, none of those proceedings were started here.

But where a motion to quash the indictment is based on the failure of the indictment to state facts sufficient to constitute a crime, or former jeopardy, or the statute of limitations, it may be made at any time before the verdict.

However, that, as I follow Mr. Rose's argument, is not one of his grounds.

There are many grounds for a motion to quash, and they do not lend themselves readily to classification. In general, the motion may be made upon one or more of the following:

Defects or irregularities in the drawing, summoning or in handling and organization of the grand jury.

I have heard no argument addressed to that, but merely as to the number of witnesses before the grand jury. Secondly, illegality in the proceedings of the grand jury.

I have heard no argument about that.

Third, matters appearing on the face of the indictment rendering the latter insufficient.

I have heard nothing on that.

Therefore, I take it that all of the authorities with which I am familiar, your Honor——

The Court: Could an indictment be returned without any evidence?

Mr. Lucas: Yes; clearly. [1171]

The Court: Without any evidence?

Mr. Lucas: I take it that no one can go into this proceedings here and question at this late date the wisdom or authority or right or discretion of the grand jury. However, we need not decide that issue, because based upon the proceedings here before this court already we have the fact in evidence that witnesses were sworn and testified. So, that is not one of the grounds for the motion to quash the indictment, that no evidence was offered or that there was any irregularity in the manner of subpoenaing or summoning or eliciting from witnesses before the grand jury.

The Court: What he says here is it developed during the trial that only Mr. Mainland and Adeline Skinner appeared before the grand jury, and of course the trial has shown that they could not have had knowledge of all of the facts that are included in the indictment.

Mr. Lucas: That is true, they probably could not. Adeline Skinner could only testify as to her part. Mr. Mainland was a qualified witness to testify as to the entire result, or, rather, the result of his entire investigation. He had before him, at least I take it presumptively, the sworn testimony of the defendant in this case, Jacob Danziger, which may have been read before the grand jury.

The Court: I am not very familiar with the common law procedure—of course, that is what we are dealing with, I guess—of motions to quash indictments. These [1172] new rules that we refer to make explicit provisions, they codify, we will put it that way, what may be done by way of attacking proceedings before a grand jury, and I was going to take a look at them a little during the noon hour for what light they throw on this discussion.

Mr. Lucas: I have numerous authorities here supporting each of the matters that I have addressed myself to, which I will be glad to cite to the court in support of them. As a matter of fact, the courts have repeatedly upheld enforcing the doctrine of laches in regard to a motion to quash an indictment, that three years having gone by since the filing of the indictment that it is now too late.

The Court: How does the man know his indictment until he is arraigned?

Mr. Lucas: In this instance the record shows that the defendant procured a copy of the indictment, but he was never arraigned on it.

In addition, from discussing the feature of the case produced here, there is a record, a letter, in the evidence, I recall, your Honor, introduced somewhat late in the proceedings, bearing one of the higher numbers there, in which the defendant himself in a communication addressed to the witness Carter says that, "I know that this thing has been pending against me. It has a way of outlawing."

The Court: A man probably couldn't be indicted solely on evidence illegally obtained by illegal

search or seizure. [1173] He probably couldn't be indicted legally solely on hearsay evidence, I would think.

Mr. Lucas: I don't want to be drawn into a discussion of those problems, unless your Honor thinks it is pertinent right here.

There has been no motion before this court supported on any of those grounds that your Honor is now adverting to.

The Court: You are not quite accurate in saying that. Let's forget Adeline Skinner; her testimony, necessarily, was within a narrow range. The question Mr. Rose is presenting is whether this indictment was properly brought on Mr. Mainland's testimony alone. That is really what his point is. He has used the word "hearsay" in his argument about that.

Mr. Lucas: We must presume, first, the regularity of the proceedings of the grand jury; we must presume the regularity of the functioning of the United States attorney's office; we must presume the fullness and fairness of the consideration and deliberations of the grand jury. Every one of those things are inherent in the sovereignty of our government. We cannot speculate or even indulge in a presumption to the contrary.

If that is sought to be invoked or injected into a case, it must be made upon the strongest of proof. The presumption here is that Mr. Mainland gave to the grand jury [1174] the full and complete result of his investigation, plus the testimony taken by him under oath of Mr. Danziger, and that a

full and fair representation was made by Mr. Mainland before the grand jury, and that they acted with due deliberation; and any one attacking that must attack it not on idle assertion that it is hearsay or his or that or the other.

That is the government's position with regard to that.

The Court: You get ready, now, Mr. Lucas, beginning at 2:00 o'clock to talk about the government's case pretty fully. Mr. Rose has attacked it in its fundamentals. What I want to hear from you is in the scope that a closing argument would ordinarily be in, because Mr. Rose has laid out everything before us in his attack on the government's position. We will adjourn until then.

(Whereupon, at 11:55 A. M., an adjournment was taken until 2:00 o'clock P. M. of the same day, January 30, 1945.) [1175]

Los Angeles, California,

Tuesday, January 30, 1945, 2:00 P. M.

Mr. Rose: With your Honor's permission, so that I can clear the record up, your Honor will recollect calling my attention to a letter in the files from the Trinidad Company to Dr. F. A. Stedcke, under date of March 24, 1938, the reference there to the paragraph of previous companies in drilling and handling had expended a sum of seven and a half million dollars. I have never recognized that a statement of counsel should be considered as a substitute for evidence, but—Clerk, will you please hand Exhibit A to his Honor?

I find, your Honor, upon examination of this Exhibit A, page 141, paragraph 6, which was filed with the S.E.C. under date of July 14, 1934, the declaration that 1,500,000 pounds sterling had been expended in the acquisition and early development of these properties.

Then on page 158 of the prospectus, approved by the Securities and Exchange Commission, Exhibit A, of the prospectus approved in that exhibit, under date of August 9, 1934, has the same representation in that.

And I thought I ought to call your Honor's attention to the state of the record in that regard.

Mr. Lucas: May it please the court and counsel, let us start in reviewing this testimony where the government contends was the inception of this scheme, and review what [1176] the testimony shows with regard to the devising of the scheme, and after discussing briefly the testimony of the witness Carter, turn to what Mr. Danziger says, and see if by his own testimony we cannot show the devising of the scheme.

Now we start with Mr. Carter in New York, he meets some friend who tells him that a friend by the name of Danziger is at the Barbizon Plaza Hotel and has an oil deal, and he is looking for a salesman.

Mr. Carter goes to meet Mr. Danziger and finds Mr. Davis or Mr. Koch in Mr. Danziger's room, and Danziger and Koch are talking over some matters pertaining to sales, sales literature, and for all that appears in the record, the inference is deduc-

ible right there that Koch was selling, or Davis, was probably selling out on this list of South American oils, or the all-American petroleums, or whatever it was. But, anyway, Carter is in the room and Danziger meets him, and they start to talk, and Mr. Danziger explains his deal after making some reference to the departed salesman Koch, and Danziger then and there admits that he knows the man is traveling under an alias, he starts to talking with Carter, and he shows him literature, and he tells him what he has, that he has got a deal, an oil deal, that is a rare thing, it is out from under the clutch and supervision of the S.E.C., that he has lists of old stockholders of two companies, he thinks there is money in the [1177] deal, and he tries to interest Carter into taking it up.

Carter listens to him and sees what he has there. Apparently he is at least sufficiently impressed to start out on a deal whereby he gets a commission for sales that he makes. But with the prudence natural to anybody he makes some inquiry about these rights, the so-called rights certificates, copies of which are in evidence, and he talks to Mr. Danziger about them. Danziger, in effect, tells him that they are a hocus-pocus, that the companies are defunct, that the stockholders are scattered, that the boards of directors are not there to make any complaint, and that he, Danziger, has written up these right certificates and, "When you go out on this sale you take some of these with you and fill in the name of the victim that you are calling on and the number of shares and see what you can

do.” A temporary arrangement is entered into right then and there whereby Mr. Danziger gives Carter a list of stockholders of the South American Oilfields, Inc., and the All-Americas Petroleum Corporation, which list is limited to people in and around New York City. And Mr. Carter goes out and comes back in four or five days and says the deal isn’t good, it hasn’t much potency, the people have been reloaded many times, lots of the addresses are not valid any longer, some of them are dead, “And those that I did get to talk to are not interested, they have been tapped too often.”

Danziger said, “Can you get me another list?” He didn’t care about what kind of a list it was. He wanted a sucker list, so-called. He said, “Can you get me another list?”

And Carter said to him, “Well, yes, I know another company, and I think I can get you a list, but how about this thing? This South American and All-Americas deal that you had, there wasn’t anybody to kick about it, but here this company has just folded up, but they have got a good stock list and they have a board of directors, how are you going to create this right stuff?”

Danziger said, “You leave all of that to me. I have been through this plenty of times. Don’t you worry about that. I am a lawyer, I will draw up the contract. You just bring me somebody that is the head of that deal, the head of that Great Eastern outfit, and I will cook up a deal that will be all right. I have found out in my experience that the success of any one of these things is the sales psy-

chology that you put around it and the attractiveness of it, so you bring me that man.”

And Carter went out and he produced Mr. DeHart in the course of time. And from then on we do not have to rely upon the testimony of Mr. Carter for the formation of this scheme and device to bilk the public. Fortunately for the prosecution in this case, there is in evidence in the form of exhibits documentary proof in the handwriting of the [1179] defendant Danziger himself that sustains and bears out every oral statement made by the witness Carter from the witness stand.

I refer your Honor to Exhibit 97 in evidence, which is on the letterhead of the Trinidad International Petroleum, and contains writing indisputably and incontrovertably in the handwriting of the defendant Danziger. It is a revision of the old letter that had been previously sent out to the South American Oilfields. This is prepared now for the Great Eastern deal, and we find in this first one, “We beg to acknowledge the details received from you with reference to your holdings in South American Oilelds; Inc.” scratched out and substituted in lieu of “South American Oilfields, Inc.” in the handwriting of Mr. Danziger, “Great Eastern Natural Gas Corporation.” It goes on down and we come to this wording, “in which your South American Oilfields Company, Inc., were formerly interested,” stricken out and in the handwriting of Mr. Danziger, “and oil and gas lands in New Mexico and other parts of the United States.”

They didn’t even confine it to New Mexico, though

there was some financial, some inchoate thing, an optional right, or something, that the thing was supposed to have had in the State of New Mexico, but here in his literature he is not limiting it to the State of New Mexico, but other parts of the United States.

Now, then, the next paragraph, "Because of such former [1180] interest this company has arranged with Wake Development Company, its underwriter, to extend to all South American Oilfields, Inc. and all Americas Petroleum Corporation stockholders a right to participate in any future profits," and so forth; that is stricken out and in the handwriting of Mr. Danziger there is appended the following: "This company is lacking in skilled personnel capable of handling the development and marketing of natural gas and being desirous of having the aid of Great Eastern Natural Gas Company in such connection it has entered into a contract with the latter to develop and market the natural gas which will be produced from our properties, and to market our petroleum products for us," and so on.

Now, you talk about a scheme and a device. The unctuous effrontery of that defendant to sit in a New York hotel room and concoct such a scheme as that with all of its implications, to go out in the mail, all in his own handwriting, amply supports everything that this witness Carter said about the formation of this scheme and device from that witness stand.

Now, that this is the handwriting of Danziger cannot be refuted.

Carter tells us that DeHart came up there and that DeHart and Danziger sat down and figured out this deal.

Now, if you want further proof of that, it is in the form of that contract which is introduced in evidence, the [1181] entire document which I am going to take the time to read at this moment, but this very language and the general outline of the scheme as told to us by Carter is contained in the contract.

So much for that for just the moment.

Now, if we turn to Exhibit 100, we find further documentary proof in the handwriting of Danziger of the truth of the oral testimony of Carter. Carter says the thing was concocted there up to the present form as I have outlined, then the contract is entered into and then Carter and Danziger get together on how they are going to bilk the public, and the sales literature that is going to go out, and the come-on correspondence that is going to be put in the mail, the lure and bait that is going to be flooded out to these Great Eastern Natural Gas stockholders. And in support of that oral testimony of Carter we have evidence in the form of Exhibit 100, which is on the letterhead of Trinidad International Petroleum, and in Mr. Danziger's handwriting, and it says—this is something that Carter said Danziger and he prepared, Danziger wrote out and he took to the printer, it was printed and thereafter mailed.

Now, what is this? A form letter. "Dear Sir: We thank you for your reply to our inquiry with reference to your stock holdings in Great Eastern Natural Gas property.

"A marketing and operating oil and gas contract is now in process of negotiation between this company and the [1182] Great Eastern Natural Gas Company, which if consummated the basis at present proposed would obligate the offering by our underwriter"—Wake Development Company in Los Angeles, I suppose—"of Trinidad International Petroleum of certain rights to Great Eastern stockholders. The inquiry in reference to our stock holdings was made in order to have our records complete so that we may reach you promptly in the event certain anticipated stockholders' rights shall be due you, providing the above contract is consummated.

"In view of numerous inquiries as to the personnel of our company we are pleased to set out below a list of the directors and management in active control of the operations of our company:"

Now, there follows those in active control and management. I am not going to read all of this, but there, I say, your Honor, in the handwriting and in the words of Mr. Danziger himself we have the scheme in the process—it is already formed in their minds, it is in the process of being carried out. A deal with the Great Eastern cooked up out of whole cloth, two men sitting in a hotel room, Danziger representing the Trinidad and the Wake, DeHart purporting to sign for the Great Eastern

Natural Gas Company, and a split of the proceeds.

While that contract, I believe—and if I am in error some one may correct me—provides that Great Eastern gets $66 \frac{2}{3}$ of the sales price of the securities, in truth [1183] and in fact the $66 \frac{2}{3}$ of the take from the public went to Carter to be allocated one-third for commissions, as he said, and one-third for expenses, and Danziger or the Wake Development Company got the other third; presumably, I take it, we might draw the inference that the boys in the Great Eastern were taken care of, DeHart, Palmer, whoever it was. Anyway, that is not of concern here.

Now, that is the hocus-pocus that is sent through the mail at the very inception of this scheme. What does Carter tell us about it? Carter says: After all that flood has gone out to these people, we took two or three hundred names at a time, we gave—the fast boys with the follow-up—we gave them a kit and turned them loose on these people personally, to give that final touch to extract the money. And I refer to Exhibit 103, which is on the letterhead of the Wake Development Company with the Los Angeles address. It bears a date at the top, August, 1935. Remember, Danziger is still in this country now, he is still here, he hasn't gone to Europe yet, and this is given, according to the witness Carter, to the boys who make the touch, and it says:

“To Whom It May Concern: The bearer of this letter whose signature appears in the lower left-

hand corner is an authorized representative of Wake Development Company and as such is empowered to receive checks, securities, money orders and cash for all transactions with respect to your 'Rights'." [1184]

What a horrible misuse of a wonderful word.

"Make all checks payable to Wake Development Company. Very truly yours, Wake Development Company, M. Bishop, Vice-president."

What does Carter tell us about that? When this literature typified by Exhibit 100 was being worked up, Carter says that Danziger rented a box at one of the post office branch offices there, under the name of Bishop, I think.

The Court: You say you think?

Mr. Lucas: I believe that is the name. I am quite sure it was Bishop. There was mention of the word—"Davis" comes in there, but I am inclined to believe that it was "Bishop."

And that the return mail came back to that box. And notwithstanding the fact that counsel argued to the court this morning that our friend Mr. Carter here didn't use this fictitious name until way late in the season, Carter's own testimony from the stand with respect to this exhibit says that, "C. Cameron is in my handwriting, that is the name I was operating under if I went out to reload these people."

And while we are on that alias subject, let's clear that up in its entirety. Danziger's testimony in the transcript, which I will get to in greater detail farther along, says that "The first month

I knew Carter in 1935 I knew he was traveling under an alias; it was either Carmen or [1185] Carter; I don't know what the name was in which the alias was, but I knew he was traveling under an alias, he told me so himself, he was having some financial difficulties, some trouble with his wife."

We have, then, Danziger right in the middle of the concocting of this scheme, not by his own testimony, so much, at the present time, but by his writing over his signature, as you might say, and what is the first hot deal they get? Let's just see how Mr. Danziger can explain this one away. We have got him in this deal now; he is waiting there now to go to Europe, and some of Carter's bird dogs go out and they make a touch. Carter has assembled his salesmen; they go out and they get ahold of a Mrs. Pierce over in South Amboy, New Jersey, and some fellow, I think the testimony is—and if I am wrong I will stand corrected—went out and made a \$600 sale to this woman, and it was called to the attention of this fellow Franklin or Kramer, and he said, "Oh, let me in on a deal like that; boy, I can go out and make a real touch; turn me loose."

And Carter, knowing this fellow, says to Danziger, "Listen, I just don't like that; I know this boy for a long time, he is fast, you can't hold him down, he just goes crazy, he makes any kind of a representation; I don't like to turn him loose."

Danziger, according to Carter, says, "Let him

go, I want to get out of here for England, turn him loose, let him [1186] go out there.”

And they did. And true to Carter’s prediction and admonition to Mr. Danziger, that boy came back with a four or six thousand dollar check, and he turned it in to Danziger, and then they cut it up, and the testimony is that Danziger got \$2,000 of it to help finance his trip to Europe.

Warned that the fellow was hot, that you couldn’t control him, but that he was a money producer, Danziger said, “Let him go,” and took his cut of the ill-gotten gains and went to Europe. And this man told him before he left,” “Listen, let me loose on that old woman over there and I will sell the whole issue,” and Danziger said it was O. K.

Now, they had had a hocus-pocus deal down there in Wilmington, Delaware, all right, about setting it up and giving it the semblance of regularity; but they had only escrowed, I think, according to the exhibit, 20,000 shares. But we will send Danziger to Europe and we will wait until this boy Kramer has a chance to work on that old lady over in New Jersey.

Carter, knowing the fellow, has got his eye on him. What happens? He gets away from Carter; I imagine that Carter isn’t just a dumb fellow, he gets away from Carter, and he goes over and touches this woman for a big chunk of money, I think the witness said \$36,000. This boy is smart, he is not going to cut Danziger or Carter in on that [1187] deal. When Carter gets wise to it he tries to smooth it out, to give it the semblance, at

least, of regularity and legality. But this fellow said, "No, I am holding it."

The fat is in the fire, the deal looks terrible. Carter wires or cables Danziger and tries to do what he can, and the record is clear that there was the utmost of freedom of expression from and to, back and forth, so that Mr. Danziger knew the full import of that deal, and as a result of that, something in the exhibits will bear me out, I am certain, this fellow is arrested, and Danziger, to protect himself, of course, cuts off the whole deal; he says to Carter, "Stop, hold the deal, you have got to quit that." So there is a cessation.

Carter fires his salesmen and picks up the deal himself, and he and Danziger, by a mutual exchange of correspondence and cablegrams—he then becomes the only active representative of that deal from henceforth on. And it is in the exhibits. There is a letter there, I forget which one it is, in which Danziger expressly lays it down to him how that transaction from thenceforward will be handled. "You send the money to Wake Development in Los Angeles. You handle all your deals out of there. You send stock certificates there. You do all of your business out of Wake Development Company in Los Angeles. My sister has got instructions to carry out my words and my direction in the matter." And from then on what do we find? We find [1188] Danziger in England, Mrs. Faulkner in Los Angeles, and Carter out beating the bush wherever he can find a victim.

That continued to exist and was carried out to

the utmost detail until Mr. Danziger came back from England.

Now, that there was complete understanding and concert of action between Danziger and Carter from 1935 until '37 is amply borne out, if the court please, by this correspondence from Danziger to Carter just before he leaves England. He writes from the Park Lane Hotel, Piccadilly, London, on July 1st:

“My dear Old Timer, I am leaving here for New York on Baltimore Mail Lines ‘City of Norfolk’ on July 12 and will be in New York on the 22nd.”

Those dates are important. We will assume the ship is on time, at least for the purposes of this argument, because it bears directly on some of this Parsons’ transaction.

“I may likely go to Barbizon Plaza but am not yet certain tho I will collect mail from there if I don’t go there.

“I want very much to see you—will not likely be in New York for over a week—possibly I can personally help with Parsons—or any one else.”

Now, I say Mr. Danziger had been in Europe two years, I say that the details of working the victims for their money was arranged and carried out—was arranged by Danziger and carried out by Faulkner and Carter in his absence [1189] through correspondence with them, but I say, further, that there was complete concert of action and knowledge

on the part of Danziger or he couldn't have written this before he left England.

The Court: How much money do you think was raised while Danziger was in England?

Mr. Lucas: In Europe? On the Parsons deal alone——

The Court: No; from '35 to '37.

Mr. Lucas: I have not checked that with Mr. Mainland.

The Court: How much do you think was raised all told?

Mr. Lucas: My recollection of my conversations with Mr. Mainland is that we estimate that this deal—that we have discovered, I believe, in this deal evidence to indicate that about \$75,000——

The Court: Gross?

Mr. Lucas: Gross, was taken, with a strong suspicion, I believe, on the part of the S. E. C. that they didn't discover everything.

Mr. Rose: May I interject an observation, your Honor? That statement has no foundation whatever. There has been an analysis of all these reports, income tax and everything else, and I say to your Honor that the Wake Development Company didn't, from the inception of this 1935 transaction up to the 1941 incident where Mr. Mainland was making his examination—your Honor will find that the gross acquired by Wake Development Company is around \$10,000 and no more. [1190]

I don't like to interrupt anybody in an argument, but I think he ought to try—he is drawing on his imagination as to what he thinks the evi-

dence shows, but when he starts giving your Honor figures, I think he ought to take the precaution to really find out something about it.

Mr. Lucas: I was trying to answer your Honor in the utmost good faith. Naturally, in the preparation of this case from a legal standpoint I haven't given too much attention to the detail of amounts. But take the witness Carter, \$36,000 I believe his testimony was, of Mrs. Pierce over in South Amboy, New Jersey, that money didn't go—no part either went to Carter or Danziger, but it was part of this transaction. If we take the S. E. C. figures, between twenty and twenty-five thousand dollars was the possible take on Mrs. Parsons. We have there over fifty thousand, and these others. I have never taken the trouble to sum them up, but I think I am safe in saying that when we consider those the deal runs in the neighborhood of \$75,000, one-third of which went to Wake Development Company and Mr. Danziger.

But to continue with this letter:

“I want very much to see you. Will not likely be in New York for over a week—possibly I can personally help with Parsons—or any one else. I would commit murder to get over a nice sale.”

Well, now, literally I don't contend that is true, but figuratively speaking Mr. Danziger was telling the truth. [1191]

Turn for a minute to what Carter said was said between himself and Danziger when he came back.

Danziger, according to Carter, said, "The deal hasn't gone good over there, I am broke, it isn't hot, I have got to get going. I can't stay here in New York long. Get out and get me a deal."

Now, if you believe that Carter was the most despicable liar in the world, you still wouldn't be in a position to doubt Mr. Danziger. He put it in writing. He said, "I would commit murder to get over a nice sale."

Now, while we are on that, let's just clean up that \$7,000 check. According to Carter, Danziger said to him, "Get up there and get ahold of that Parsons woman."

Carter said, "I have exhausted my imagination, Danziger, I can't think of another thing to go up there and reload that woman with. I have got to get somebody else with a fresh touch and with a fresh approach."

So he called upon his friend Dick Schraeder or somebody, Shaeffer.

The Court: Tracy?

Mr. Lucas: Dick Shaeffer. And Dick Shaeffer goes out and brings in Joe Robbins. And as Carter said, "We all planned it; Danziger, myself, and Shaeffer figured out the take on that poor old woman up in Pottsville, Pennsylvania." And they sent up the best that they could find to make the touch, to make that sweep that they wanted. Danziger had to have money. All right, what do they do? They send [1192] this man up there. And as proof of the judgment of Carter as to sending

somebody up there right, they come back with a \$7,000 check. Now, you can't deny that.

I marvel at the manner in which the government has been able to substantiate the oral testimony of this witness Carter.

The Court: How much did she put up before?

Mr. Lucas: There are two checks in evidence ahead of that, one for \$5,000 and one for \$4,000 that occurred while Mr. Danziger was in Europe.

Mr. Rose: Mr. Mainland is trying to correct you. There is a check for \$1,000 and \$4,000 which never saw the light of day, as far as Wake or any defendant. It was cashed by your favorite witness under the name of Edwards, and the proceeds deposited by him in an account maintained in that name.

Mr. Lucas: Thank you; but you didn't quite complete the testimony. And the testimony is that he gave a cut that was coming to Danziger to the Wake Development Company. And the proof of that statement is, as I said a while ago, a letter from England which says, "I can personally help with the Parsons matter."

Now, that is true, you don't find the stamp of the Wake Development Company on that \$4,000 and that \$1,000 check, but I do say that Danziger knew about it because of this letter. [1193]

That is why when he stepped off of that boat he told Carter, "Get up there and get that woman and get going, take that Parsons woman." And they sent up that fellow and he took \$7,000. And Danziger himself kept an eye that the Wake De-

velopment Company stamp of deposit is on that check.

Bear this in mind, if the court please, that Carter didn't cash that check; that check was cashed by the Wake and the cut made, and Danziger got his proportion thereof.

Now, let's see the malarkey that Danziger then gives to his old friend Carter, bearing in mind that this is a letter written between two conspirators at a time when there isn't——

The Court: Is that a Southern California expression you just used?

Mr. Lucas: Malarkey?

The Court: Yes.

Mr. Lucas: Yes, I think it is common here. I think your Honor catches the implication.

The Court: It isn't common any place else that I have lived in. Malarkeys are good people where I live.

Mr. Lucas: They are not people here.

He said, "I have a firm agreement with a nice house here to furnish TIP money for five wells and then later, after production, bring it out on the market. They are organizing a public company to take in some other lands and get their money, part of which will then go to TIP. [1194] The time has not been ripe of late to bring out the new issue, and I just can't stay here longer while they work it out—have been away from L. A. for much over two years and must get back there. But TIP is 'set' sure as you live, and some of these days will show you a nice company.

"I am sending this to Phila. and a duplicate to L. A. to send to you in case they have a better address."

That very expression there shows the utmost of intimate contact and exchange of views in correspondence between Danziger, Carter, and Mrs. Faulkner in Los Angeles.

The Court: Did Carter testify he was writing frequently to Danziger while he was in England?

Mr. Lucas: Oh, yes, he said there was always a complete exchange of correspondence.

The Court: Were there any letters from Carter found in the Danziger files turned over to the S. E. C.? [1195]

Mr. Lucas: None whatever that I know of. Where Carter wrote to Danziger in England?

The Court: Anywhere.

Mr. Lucas: Yes, all these notations about "old-timer" and these notations on letters back and forth——

The Court: No full letter, though?

Mr. Lucas: No full letter that I can recall. Because, remember, from 1936 on Carter was on the dodge, after his conviction in Illinois. That is a significant fact to bear in mind there.

"The 'president' "—the word is quoted—"will be glad to call on Parsons and explain the very encouraging results to date—I also have a name in New York that I would like you to call on who is already a nice shareholder."

Now, look at that. You talk about a scheme and a device. Up here he is just telling Carter the

deal isn't so good, things haven't been ripe, not time to bring out an issue, I just can't wait any longer, I have been away too long now, and the deal isn't going good; but when he gets to the double shuffle that they are going to give a victim, he says, "The 'president' will be glad to call on Parsons and explain the very encouraging results to date."

Well, if she had just got a hold of this letter and read two paragraphs above it, she would have seen what the encouraging results to date were.

Before he left London, even before he wrote this letter, he needed money; but he knew that Parsons' touch was a good one. He had his cut on it, that is why he knew it was a good one. He wrote Mrs. Parsons, and here is his letter.

"London, England. June 28, 1937.

"Elizabeth T. Parsons," and so forth.

"Dear Mrs. Parsons: It is pleasing to have advices from our California office to the effect that you have apparently added to your holdings in this company and I feel sure that your investment will prove very profitable.

"As you likely know I have, as president of the company, been in England for some time on business of the company and while I am not at liberty at the moment to give out any details I can assure you that Trinidad and this company have a brilliant future and we are doing everything possible to make a foremost company out of it. We are, sincerely yours, J. M. Danziger, President."

Now, there is just a masterpiece of nothing. As-

surance, double talk, bamboozling, any other flamboyant term that you want to apply to it; "I am not at liberty to give you the details, but I can assure you." That is on the 28th of June, 1937, and three days later, on the first of July, he was telling Carter just the exact opposite. [1197]

Mr. Rose: Mr. Lucas, doesn't that letter that you read to the so-called Mr. Carter, which incidentally is not addressed to him at all, doesn't it state that a deal had in fact been closed for the acquisition of 100,000 shares by this British company? Or are you trying to interpret between the lines?

Mr. Lucas: I see nothing about it.

Mr. Rose: You better read it again.

Mr. Lucas: When your turn comes, Mr. Rose, you can answer anything about it which you so desire. The exhibit is No. 105.

Let's connect up this deal with Los Angeles to get the picture; Carter in New York some place, Philadelphia, Danziger over in England, and the Wake Development Company and Mrs. Faulkner here in Los Angeles, and see what that brings forth.

July 16, 1937, that is 15 days after the letter Danziger wrote to "My dear Old Timer," and Alda Faulkner says to Carter,

"My dear Old Timer: I surely was glad to receive your wire today as I have some important things I want to tell you and have just been waiting for a definite address from you.

"On the yellow sheet attached I am giving you

copies of all correspondence had with Mrs. Parsons and I believe it is self explanatory."

That happened with all these deals, it runs through [1198] every exhibit, Faulkner supplied Carter with copies of all correspondence, and the Parsons' deal was no exception.

"I sent J. M. a copy of your letter in which you said you would probably write him suggesting a form of letter for him to write to her."

Talk about concert of action. There it was. They are all three in there ganged together to pick the victim. But the letter says:

"With the thought in mind that he would very shortly be returning to New York, he did not wait for the letter from you with the suggestions, but wrote Mrs. P. as enclosed copy on the pink sheet."

That is just what I read to your Honor, the president writing to Mrs. Parsons. Cooperation, concert of action to the nth degree.

"That brings you entirely up to date with all correspondence with her."

"Now as to J. M.'s plans. He left London on July 12th and will be in New York on July 22nd. He advises me that he wrote you to Philadelphia—I don't know just what address he used, but in the event you did not receive the letter from him, I enclose copy of his letter to be sent you if I heard from you in the meantime."

It shows you the precision and the effort with which these people worked to keep always in constant touch with [1199] each other. That circle was always complete, so that each would always

know what the other was doing. Copies of correspondence between Wake and the victim, copies of remarks made by Carter to the victims, and all are constantly circulating back and forth, as your Honor can see from just a half reading of those exhibits.

“O. T., what about this? Check with this. Answer this for me”, and so forth. Here is a sample that they had between themselves.

“The boat he is returning on docks in Baltimore on the 22nd but he will leave for New York the same day. He is not at all certain that he will stop at the Barbizon Plaza Hotel, but will call there for his mail. Will you have a note there for him on the 22nd telling him where he can get in touch with you at once. His plans are indefinite and he does not know how long he will be in New York and is very anxious to see you as soon as he gets there.” On that Parsons deal.

“I am mailing this today in advance of the receipt of the letter which you state you are writing—that will be received here on Monday, July 19th—and if it calls for any activity on my part, I will write you again immediately upon its receipt.

“Hope things are breaking for you. Sincerely, A. D. F.” [1200]

There is the concert of action to get together for a conference for a touch for a sale immediately upon that ship docking. All right. Now, then, we know the result of that. They went up and got this \$7,000.00 check, they split it, and Danziger came to Los Angeles, and from then on until 1942

or 43 the record is complete with the details of their mulcting the public; Carter the contact man, Carter making the touch, making the representations, apprising Danziger and Mrs. Faulkner of it, the exchange of correspondence, the sending of the money, and so on. Now, let's just take a few of those letters as we go along.

The Court: Until what date did you say?

Mr. Lucas: Sir?

The Court: Until what date did you just say?

Mr. Lucas: Until nineteen hundred—I think I used the expression forty-three, your Honor, and advisedly so. I have here and will refer to it in just a moment, the exhibit, the last few introduced on behalf of the government, that Mr. Danziger typed to his old friend Carter telling him—yes, here it is, the “Dear friend” typewritten letter, Exhibit 96, which the witness Carter testified he received, I think it was in June of '43, maybe as late as '44, but I think——

The Court: But so far as money is concerned——

Mr. Lucas: So far as money is concerned, the last record, I believe (of any money exchanged and split between [1201] them is in 1940. I think that is the Parsons' deal, the last money that was exchanged between them, the division of money in the Parsons' transaction occurring as late as December, I believe, or November or December of 1940.

Now, let's get along on——

The Court: It is now 3:00 o'clock; you can split the afternoon to suit yourself.

Mr. Lucas: I expect this will be a good time. I am in need of a drink of water.

(A recess was taken.)

Mr. Lucas: May it please the court and counsel, to refer to and finish up the correspondence that I referred to that was the last correspondence between Carter and the defendant Danziger, I refer now to Government's Exhibit 96, which I think the witness Carter said that he received in 1943 or possibly '44. In fact, I believe he said, if my recollection is right, he received this in '44, to show the contact between these people between 1935 right up to and long after the time of the indictment.

"Dear friend:"—

The Court: You don't need to read that; I remember it.

Mr. Lucas: Do you have in mind what I am talking about?

The Court: I remember the letter.

Mr. Lucas: Let's go to the exhibit, then, on this Parsons' transaction. We left them at the split up of this \$7,000.00 check in July 1937. We pick up Exhibit 85, and [1202] turning rapidly through that we find that on November 7, 1937 the secretary, Alda Faulkner, wrote Mrs. Parsons—and I do not read it in its entirety, but only to show you the contact that was kept up constantly by the Los Angeles office with these various victims to bulwark and fortify the work that was carried on by Carter. Bearing in mind that in July they

split this \$7,000.00 check of Parsons', of 1937, we now turn to November, the same year:

"Dear Mrs. Parsons: Your letter of October 23rd received and we are holding it for Mr. Danziger, our president, who will give it his attention when he returns to this office.

"We are, however, taking the liberty in the meantime in assuring you that, in our opinion, you need have no alarm over your investment in this company. Since it is evident from the tone of your letter that you are not very familiar with the general setup of this company we are enclosing herewith a booklet which was published in England and sent to English shareholders of this company in 1935."

And I want to parenthetically interject at this time the testimony of Mr. Mainland, that an examination of the books of the Trinidad Company showed that there were 500 shares outstanding in England. But if you hear this it is just drooling with the implication that they are many and numerous in England. [1203]

"If you will note the character of the management of Trinidad International Petroleum Ltd. Company we believe it will reassure you on the investment you have made in the company. Mr. Danziger, you will note, was for over 20 years associated with Mr. E. L. Doheny as a director and vice-president in all the companies comprised in the well known Mexican Petroleum and Pan-American Petroleum Transport companies." [1204]

Then it goes on and on and on in that vein

and comes down to that reference that your Honor had awhile ago, to the \$7,500,000.

“The investigation which our Mr. Danziger and his group made on the Trinidad International Petroleum Limited properties before becoming associated with the enterprise as shareholders and directors in active charge, disclosed that there had been invested in the acquiring, drilling and handling the Trinidad International Limited properties by previous companies in control of same some 7,500,000 shares——”

The Court: Dollars.

Mr. Rose: Dollars.

Mr. Lucas: Dollars. Thank you.

The Court: We wanted to be sure you got it.

Mr. Lucas: There, as I say, your Honor, when we speak of a conspiracy, when we speak of a scheme and device to mulct the public, and it is followed up letter by letter, assurance upon assurance, drawing upon the imagination, inuendo, reference, very seldom do we find a case, I take it, that has been so bulwarked with documentary proof.

Let's go to another one, as late as May, 1940. The next letter sent to this poor old woman, Mrs. Elizabeth Parsons——

The Court: How old was she, by the way?

Mr. Lucas: The record indicates she was 70 at the time Carter was contacting her.

Mr. Rose: In what part of the record is that?

Mr. Lucas: I shouldn't say the record; I should say investigation.

“Enclosed herewith you will find certificates of Trinidad International Petroleum Limited in your name as follows: * * *

“Kindly sign the receipt enclosed and return in the self-addressed envelope herewith.

“Since these certificates are being delivered to you in advance of final payment”——

This is the nth degree now.

“——of the total amount due and since the balance amounts to \$940.00 we have prepared a note for this amount and dated it for settlement on June 15, 1940.”

Let me say that the record read in here in the sworn testimony of Danziger is that he typed the note himself.

As I say, the effrontery of this defendant to take and send a note through the mail—mulet this woman of the thousands that they did, and then send her a note in advance of the final payment to credit to her account.

“May 2, 1940.

“We are in receipt of your check in the amount of thirteen hundred and seventy dollars. [1206] This is to advise you that we are transferring 600 shares * * * ”

There wasn't a year I don't think that they didn't hit her.

“February 8, 1938.

“We have your letter of the 5th inst. Mr. Edwards”——

and here is the touch—

“Mr. Edwards can be addressed through this office at any time.”

That was Carter’s alias with this woman.

“Mr. Edwards can be addressed through this office at any time.”

Can there be even the slightest doubt that as between Danziger, Faulkner and Carter, they were in constant touch at all times, and they recognized, to Mrs. Parsons, that Edwards was their man and was making the contact for them, and that she could reach him at any time.

Now, your Honor, let’s go to the McCoy deal, because to me the McCoy deal is so full of that which is most typical of the trickery and downright skulduggery, and unctuous effrontery on the part of Danziger and this Los Angeles phase of it, working in the closest cooperation with Carter and his cohorts, bearing in mind that in the McCoy deal there was the fellow Dawson, and I haven’t as yet adverted to this mythological person Winslow; bear in mind that Mr. [1207] Carter and Mr. McCoy both occupied the witness stand, both told about the McCoy deal.

The Court: What?

Mr. Lucas: McCoy was a witness here and he told us——

The Court: The mailman?

Mr. Lucas: Yes. He told us how Carter, as Baker, came and went into his pitch and gave him his come-on story about his rights either in the South McKenzie or in the Golden Quebec, or in

the Great Eastern—they worked him whichever stock the fellow happened to have—and how he told him if he hadn't exercised this right that he should get hot immediately and write Los Angeles and maybe it wasn't too late, it had been three or four or five years ago, and McCoy had received the word and notices, but he hadn't paid any attention to it, but if he really got going he thought they would condescend to take his money away from him. So he looked up the number of shares and wrote, and the touchoff was that "We will buy these notes back off of you, because you have the rights as a former stockholder in this old defunct company, to make this thing, to get both stock and notes of the Trinidad, and you will get \$10 par value there, and we will come along and take those notes off your hands, because you are the only one that can exercise that right."

So McCoy fell for the deal, bought six or seven hundred, and the promise was that by the time he got those and got them [1208] back they would take them off his hands at a profit, and then he would be able with that money to buy the second batch, and so on.

Carter made the contact, followed it up with telephone calls, and then Mike O'Brien, under the name of Dawson, came on out to keep the thing warm, and in the meantime McCoy is writing back and forth to Wake and sending in his money, sending his down money first, and then \$2,100 more, I believe, and then they send him draft attached some more stock, and that is the one that didn't

click. Let's just examine this correspondence briefly to just see how that deal was perfected, just how they could take one of these victims and put him through the mill and clean him and kiss him good-bye and go on to the next one.

The first letter is February 11, 1938 to Trinidad Petroleum Company, a carbon copy of McCoy's letter to Trinidad saying that he just heard the good news about the Great Eastern stock, allowing \$2 a share on it.

Then they write back to him on the back of that letter, and they tell him, "Some years ago this company made an offer, by means of a Right Certificate, to the shareholders of Great Eastern Natural Gas Company which entitled them to receive a credit of \$2 per share." Then giving him the old business about suggesting that he check his records, make sure he hadn't exercised this right before, they couldn't be in a position of letting a man exercise that [1209] right twice; also be awfully careful that he hadn't waived it, and whetting that victim's curiosity and desirability, and holding out the bait there that it was something real precious they were guarding. The time had lapsed, and yet they wanted to be just, if he hadn't been victimized before they would give him the opportunity now.

He writes back and says:

"I have looked up my records and cannot find any reference to this exchange being offered me for Great Eastern Natural Gas Company stock.

"I have looked up my stock and find I have 2,750 shares."

Boy, how they must have gloated.

“Let me hear from you at once in regard to this.”

Now they say, in reply:

“We are not yet ready to give you our conclusion in this matter. It might be helpful if you would state definitely that you demand your right.”

Now, there is the business at its best; there is where they are working on him with their device and scheme at its real functioning high-powered efficiency; giving him the old business, “State to us that you demand your rights.” Insist on it to us that we mulct you out of your money.

So he takes the bait, hook, line and sinker and he comes [1210] back, sends them \$275, 10 cents a share on 2,750 shares.

They acknowledge receipt of it:

“We are this day in receipt of your check in the amount of \$275.00 which you tender as a deposit against your request to exchange your 2,750 shares of Great Eastern Natural Gas stock for 2,750 shares of Trinidad International Petroleum Limited stock and 2,750 units of preferential profit sharing notes.”

Then he writes them a letter. By this time he really thinks the business is something, because he goes from handwriting to a typewriter.

“I am enclosing herewith check for \$1,825.00 payment on 700 shares of Trinidad International Petroleum Limited and 700 preferential profit sharing notes of one pound each. Allowing me

credit for \$275.00 advance payment makes a total of \$2,100.00.

“I am also enclosing the following certificates of stock of Great Eastern Natural Gas Company, Limited, registered in my name as follows:”

giving the number of the certificates and the number of the shares, and so forth.

They acknowledge receipt of the \$1,825, and they thank him. [1211]

Now, on the 26th of March he writes them in his own handwriting,

“Send the 2,750 units of stock and notes with a bank draft attached for the balance to the Union National Bank of Cadiz, Ohio.”

In the meantime, Dawson has been down, Mike O'Brien, under the name of Dawson, has been giving him the buildup and telling him to send in for the balance of it, let the thing come out, let the demand come from Wake with a draft attached, and they are going to be there and take him up, and it is just like that, he will get the money and he won't be out anything at all. That is the story. But when the day came and the draft was there and they weren't there—you see, they figured to call him on the phone and tell him, “You pick it up and we will be down there tomorrow and take it off your hands.”

“Pursuant to your request of the 26th inst. we have this day sent to you through Union National Bank of Cadiz certificate for 2,750 shares and preferential profit sharing note for 2,750 units of Trinidad International Petroleum Limited in your

name; together with sight draft in the sum of \$2,562.00.”

Now, McCoy replies. Here is where you see so clearly just how these people victimized the unfortunate and the [1212] unwary. He says:

“Gentlemen:

“Am sorry to cause you so much trouble, but when I mailed those instructions to you, I was told I could have the money to cover draft.”

This is the letter to Wake.

“We wouldn’t find it listed any place as to value, the bank wouldn’t loan any money on it. Otherwise the money would have been ready. So if you send me the paper with the London market in it the bank will cover the draft, so they told me.

“Yours truly,

“Harold J. McCoy.”

There we have a written confirmation of the workings of Carter when he made a call on these victims, bearing in mind that he told you that to begin with in the early days of this deal in ’37 and ’38 Danziger, from England, had sent him a copy of the London financial papers showing quotations on the London market of listed stock, many of which contained names with the word “Trinidad” in them. And when they called upon a victim and were giving him the story, a quick flash of the newspaper out of their pocket, a hurried running of the finger down the list, a seeing of the word “Trinidad” or “Trinidad leaseholds” or something else, a quick folding [1213] of the paper, and back

in the pocket, and the victim is right in their clutches.

Now, this poor fellow who has been trimmed out of \$2,100 or \$2,200 at the time he writes this letter, he says: I am sorry. I am sorry I can't fall and let you get me for some more.

Because why? He believes the stories.

And we have written proof that when Danziger sent that paper and said, "I have no doubt you will find it useful," we know that Carter did find it useful, that he used it according to his own testimony on almost all occasions and supplemented it later by the purchase in New York of more recent issues of the paper, and here we have written evidence from McCoy that he worked it on him.

Now, then, the poor fellow is there believing that they will just send him the newspaper containing that listing and the bank will give him the money.

They write back to him, though, and they say: "Dear Mr. McCoy:

"According to your instructions we mailed you 2,750 shares of Trinidad International stock and notes with draft attached for \$2,562.00 to the Union National Bank of Cadiz and this draft was not honored and returned unpaid. It was also our understanding that when this draft was forwarded that we would receive the [1214] difference of \$3,588.00 which together with the \$2,562.00 completed the payment of your debit balance. Since you have not taken up this draft we are delivering you herewith 700 shares and notes as originally contracted by your letter of March 12th and which we confirmed upon your payment of \$2,100.00.

“We are enclosing certificates for 700 shares and notes and you are granted 30, 60 and 90 days in which to complete your payments according to the terms outlined in your letter of March 12. Your balance due in order to complete full payment is \$6,150.00.”

Boy, they were really going to make the touch on him.

“Should you desire to complete the payments sooner you of course may do so.

“May we suggest also that if at any time in the future you desire any information concerning Trinidad International that you address your inquiry to us and we will always be pleased to give you any information available.”

And undoubtedly they would have been, and it would have been very reliable.

Then he comes back and he says to Wake Development Company, under date of April 23:

“Gentlemen: [1215]

“It's been about two weeks since Baker and Dawson had me send in and have that stock sent out on a sight draft, and then played off on me and wanted me to lift that stock after having claimed that Baker had \$3,400 and Dawson \$137.50 wired out to your company to make the balance \$2,562 due on that stock. I sent telegrams to addresses given me and found them to be fake addresses. Nobody living there by that name. What happened to the shares and money that Dawson and Baker wired you, that left the balance \$2,562.00? I asked you about the market price on this stock and notes, but

you failed to mention anything about them. Let me know at once where they are listed and price.

“Yours truly,

“Harold McCoy.

“Baker and Dawson caused all this trouble for me and you seemed to be in touch with them all the time.”

Now, here was a fellow that was finally waking up, and he told the truth. I mean his observation was correct: “you seemed to be in touch with them all the time.” And doesn’t the record bear out the truth of his remark? Weren’t they always in touch?

But get what the president, Mr. Danziger, says to this poor fellow who has been mulcted. And it is explained to Danziger how the mulcting was done, he can’t deny that, he had word of it, he knew it, and he was accused of being in touch with them, and let’s see what this fellow said to this poor victim:

“Harold J. McCoy:

“Your letter of the 23rd”—that is the one I just read—“duly received. We also have received from Corporation Trust Company your letter to them of April 16 which they have forwarded to us.

“Our understanding of the business with you was that upon the payment of the draft on you for \$2,562.00 the balance of \$3,538.00 would be paid immediately. This was guaranteed by our Eastern representatives.”

Who are they? None other than Mr. Baker and Mr. Dawson. They were the people who called on

him, people who were in touch with him at all times.

“Otherwise we would have never permitted the shipping of the stock all the way to Cadiz even at your request.”

What a risk they ran putting that worthless stock in the mail. We would have never done it except for what you said and what our Eastern representatives guaranteed. [1217]

“When the draft was not paid by you we were informed that the \$3,538.00 payment would not be paid, and since we had received no payments except the \$2,100.00 direct from you by check we then had no alternative than to deliver to you the stock under the original contract which you stipulated when you made your payment.

“We are not familiar with the various details of your negotiations with a Mr. Baker and a Mr. Dawson and your letter is not clear to us. Do you mean to say that you paid over \$3,538.00 to a Mr. Baker and a Mr. Dawson which they in turn should have sent to us?”

You don't know whether he really suspects that Baker and Dawson are giving him the run-around or whether he wants to create in the mind of the victim that he suspicions that that is the fact.

“We quote from your letter as follows:

““What happened to the shares and money that Dawson and Baker wired you that left the balance of \$2,562.00?”

“What shares are you referring to? Did you deliver some stock to them, and if so, what was it? As we previously stated we never received the

\$3,538.00 but we were assured that our representative in the East [1218] has this amount deposited or the payment of same was guaranteed when the stock was delivered to you and the draft of \$2,562.00 paid.

“Will you kindly write us the fullest details of your dealings with these people; what you delivered to them; what addresses they gave you; a general description of the parties; copies of any letters or receipts from them. From your letter it is evident that you became dubious of the character of your negotiations after you were unable to get in touch with these men you were dealing with. It is unfortunate that stockholders often go outside their own company to get assistance and information which they can just as easily receive from the company for the asking.”

Here is the real nth degree of it:

“The Trinidad Company is managed by men of prominence and stability in the oil business, all successful in that field before ever taking over the management of the Trinidad Company. It is our belief that the future prospects of the oil industry in Trinidad, British West Indies, is most bright and that the oil business [1219] there is in its infancy and that the stockholders of our company will reap their share of this prosperity and gain more than by selling their shares at this time.”

And so on and so on.

Mr. Rose: What is the “and so on?” Why don’t you complete it?

Mr. Lucas: You will have your turn.

Mr. Rose: No; this isn't a debate.

Mr. Lucas: Poor old McCoy comes back with this:

"To start with I didn't know there was such a company as the Trinidad International Petroleum Limited or the Wake Development Company until this man Baker came to Cadiz, Ohio, and said he was looking up everybody that had stock in the Great Eastern Natural Gas Company."

That runs right on back to July, 1935, before Danziger left for England when that Great Eastern Natural Gas deal was cooked up. Here we have it three years later in Cadiz, Ohio.

"As they had a right to trade in their stock for this other stock, meaning the Trinidad and the preferential profit sharing notes.

"He says there was a man by the name of A. R. Winslow who was out in Los Angeles that [1220] was looking out for the welfare of the Great Eastern Natural Gas Company stock. They had been thinking about charging 20 per cent on each share of stock, but there were so many more that had this stock, meaning Great Eastern, that they cut it to five per cent for each share."

Then he goes on and explains the detail of this business. I am not going to bore your Honor with all of the rereading of this letter, because your Honor has already assured counsel that you have read these exhibits. But this man McCoy goes on here and he sets out in detail the number of shares, how the deal was, when the 700 shares were first put up, how they were going to take these profit

sharing notes, Baker told him this, and the whole picture; we could get all of it, it is all here.

As I say, to me here is one of the typical deals that's explained by this witness from the witness stand, that was written out by him in his own handwriting and sent to Danziger, and in which he pleaded that he had been defrauded, that the record shows that Danziger was in touch with them at all times, and wouldn't he please, now that it had been called to his attention, that McCoy had been defrauded, wouldn't he give him back his money? And Mr. Danziger in that correspondence brazenly defies this fellow, pretends not to know anything about it, doesn't know who Baker is. [1221] I tell you, your Honor, here is further corroboration of the story as Carter tells it from the witness stand, and this comes into this court partly from Danziger's own file, and from Mr. McCoy himself, and he is here in the court room now, in his own handwriting, he occupied that witness stand and he corroborated everything that Carter tells us.

So I say this is one of the clearest demonstrations that we have of the skulduggery that this man Danziger played upon each of these victims.

Now, in this particular file we do not have many exemplars of Mr. Danziger's handwriting. There is some of Alda Faulkner's. There is some of Mr. Danziger's handwriting, according to the witness Carter, on the letter, on the carbon copy of the letter from Wake to McCoy under date of April 29, 1938. There is this significant thing. The McCoy letter of May 6, 1938, Danziger's handwriting "Copy

to Wilson May 9''; showing again that close concert of action that existed. The reference to our Eastern representative, and some further handwriting there I will not comment on because I am not certain whose handwriting it is, and I do not recall the testimony on it.

I want, before the hour grows too late, and the patience of my listeners exhausted, to get to the testimony of Mr. Danziger himself. Let's see, hurriedly, what the record contains from Mr. Danziger, and I make hurried references to the sworn testimony. [1222]

He said that he had held the office of president since 1933; that the company, Trinidad, was organized to take over oil leases in Trinidad; that Hill, Gaskin and Allahar were from Trinidad; that the Standard Mining Company, a New York corporation, was controlled by Hill; Allahar assigned all his contractual rights to the company; Standard assigned to Rouse, and Rouse assigned to T.I.P., Trinidad International Petroleum; that the contract was made on 200 parcels of land; that the original documents signed by Rouse are in England; all papers concerning the deal were left with the lawyers in London; the London deal was never consummated; no rental payment of land until company qualified to develop the properties in Trinidad; Standard Mining Company never did obligate itself to do anything; I investigated Hill thoroughly when I went to England and found that he sold his own stock and put the money in his pocket. It was through Wake Development to furnish American

management. Shares of T.I.P. were divided as follows: 500,000 in treasury, 335,000 to Hill, Gaskin and Allahar, 165,000 to Wake Development Company. My services are to be rendered in the actual field operations. I accepted office of president or chairman of board and have occupied that position ever since. I am president of Wake. Mrs. Faulkner, my sister, was secretary, and my right hand until 1939, when she died. Arrangement with Great Eastern Natural Gas and Wake was such. Purchase price arrangement [1223] is to be found on page 20. I returned from Europe in July, 1937. Carter or Carmen did all the selling for Wake while I was in Europe.

There it is in his own words, sworn to. Carmen or Carter did all the selling for Wake while I was in Europe. There can't be any doubt about it.

I told Carter that there was flowing oil on the property. I told him Trinidad stock was not listed. I am sure I never told him there was a listing of the stock anywhere. Money received by Wake for T.I.P. stock sold by it was used for Wake purposes. Trinidad International Petroleum has never had at any time the finances to exercise any rights. I never had any intention that money for stock sold by Wake would be used to develop Trinidad. The same or similar deal that was given to Great Eastern Gas was given to stockholders of South American Oil Fields Company and All American Petroleum Company. I offered the same deal to stockholders of Golden Quebec in 1937. I went to Europe after July, 1935. Mr. Carmen brought Wins-

low to my hotel. Up to that time Carmen had been acting as sales agent to interest Great Eastern stockholders in Trinidad stock. He told me he had been convicted in Chicago and showed me his brief on appeal. At that time the Great Eastern contract was in default. I met Winslow twice, he bought stock the second time. Usually stock bought by the individual was paid for by him. I would say that there was [1224] no conversation with Carmen about Golden Quebec. I have never seen Winslow since I met him in New York.

During the first month I knew Carter he told me of the use of the name Carmen. I have not heard from or seen Carter since July, 1937.

All the securities that I took in on deals were worthless. I would have been willing to sell Trinidad stock for cash without the securities. Taking in this worthless stock was merely a device used to sell Trinidad stock.

There is a confession in his own language of his guilt.

Mr. Rose: Is that his language?

Mr. Lucas: That is his language.

Mr. Rose: Where is it?

Mr. Lucas: Page 47.

We will not create the idea but we accepted it. Great Eastern and All American had a questionnaire that went out to their stockholders and came back to us. The only records of any kind that Wake kept were a check book and a minute book. The directors of Trinidad——

Mr. Rose: Listen, counsel, I can't permit myself

to sit by here and have you purport to be reading to a court of the United States from a transcript and misread it the way you did.

You have directed our attention to page 47, and the statement there is:

“Well, I would put it another way. When Mr. [1225] Mainland speaks of a device, they were a formula or device used by the Great Eastern people selling this stock to aid them in selling the stock.”

That is a far cry from what you are supposed to be reading.

Mr. Lucas: I was reading from a digest of it.

Mr. Rose: If you are going to read from a record—you are supposed to be representing to his Honor you are reading a statement made by a defendant—I think you ought to be a little more cautious.

Mr. Lucas: I think the court understood exactly what I was doing, but I will read in now word for word, counsel. Starting on page 46:

“Q. The price at which you offered your Trinidad stock to these people was the price at which you would have been glad to sell it for cash without any surrender of stock?

“A. Yes, I would have been willing to. There have been times when we would have been very happy to do so.

“Q. As a matter of fact, from your standpoint the rights were merely a device to assist you in selling the Trinidad stock, weren't they?

“A. Well, I would put it another way. They

were a formula or a device used by the [1226] Great Eastern people, selling this stock, to aid them in selling the stock.

“Q. I am referring not only to that deal, but to the other deals.

“A. Well, I don’t like the use of the word device, but they were conceived and prepared and used by the organization or the individuals who were selling the stock. We didn’t create the basis or suggest the idea.

“Q. You accepted the idea?

“A. We did.”

Now, if I may proceed without further interruption.

I only know A. L. Roberts by correspondence. He did business for us in the East. He was a representative of Wake. I have never discussed Trinidad——

Mr. Rose: Are you reading from the record now?

Mr. Lucas: If you interrupt me again I will ask the court to admonish you.

Mr. Rose: You can’t threaten me; I don’t threaten very easily. If you don’t know that, you will find it out.

I can’t tell from my position here whether you are purporting to be reading to the court the statements made by the defendant or whether it is your summation as you made it in some notes, and I think both the court and myself should be made privy to that, because if you, from now on, purport to be reading a statement made by the defendant I certainly [1227] want to follow you in this transcript.

Mr. Lucas: Has the court any doubt about what I am——

The Court: That is your own summation now?

Mr. Lucas: Yes, a digest.

Mr. Rose: As long as he says that, it is different, your Honor. Frankly, I didn't know, but I couldn't reconcile his summation with the record here.

Mr. Lucas (Continuing):

That is my signature to each of the three letters. I signed them. I signed the name of A. Faulkner. I typed the letter dated July 27, 1938. The two letters dated March 28, 1940 and April 22, 1940 and signed with the name A. Faulkner, are both in my handwriting. My sister died in September, 1939. I mailed those letters to Hazelton. I do not recall the details of the letters of March 7, 1940 to Hazelton. I wrote that letter about having an Eastern representative call. It would not be Carmen because I did not know where he was.

Mr. Roberts was selling at that time but I did not ask him to call on Hazelton.

The Hazelton letter dated March 7, 1940, I dictated to a secretary by the name of Barager.

The Trinidad has never sold any oil. I know of no sales of T. I. P. except those of Wake Development Company since 1937. I know of several stocks listed in London with the name Trinidad as a part of their corporate name. [1228]

The letter to Mrs. Florence Lawyer dated November 13, 1939, was dictated and signed by me. She surrendered her mining stock and sent in her money and we mailed her stock and notes of Trini-

dad. Aronson whom I knew for years bought that stock and put it in the name of Elizabeth Parsons.

What a laugh.

(Continuing): The stub and certificate are correctly issued. Aronson paid for the stock by check or money order. I had had contact and correspondence with Aronson off and on since I met him years ago. Aronson was paid a commission on the sales he made, one sale in Seattle and one in New York.

The Edwards transaction is in either the journal or the ledger, it is not entered.

I have had no correspondence directly with Mrs. Parsons. My secretary replied to Mrs. Skinner under my instructions and perhaps signed my name—she had plenty of authority to do that.

The check of Mrs. Skinner dated September 12, 1939, represents the payment made by Mrs. Skinner for the stock. The letter signed B. J. Lehmkuhl containing the notation "O. T. We have not answered this. Please instruct," is in my handwriting. The other notations on the back of the letter I know nothing about. I do not know who "O. T." is. My guess would be that O. T. was some salesman my sister had corresponded with. I have no idea who O. T. is. I [1229] have never written to O. T., to my knowledge. I don't know the fellow in Lima, Ohio. If O. T. is a salesman and made a sale and has compensation coming to him, Wake would pay him.

The letter from F. A. Stedke, Lima, Ohio, shown witness with notation "Original to C." I would guess "C" refers to Carmen. I was not having any

contact with Carmen in 1938 or any communication after I saw him in New York in 1937. I have not transmitted any funds to him for any purpose since 1937.

The note of Mrs. Parsons which you show me was prepared by me on Aronson's instructions. I do not know if the note was paid.

The letter dated February 8, 1938, signed J. M. Danziger, Chairman, on letterhead of Trinidad was signed by me and I caused it to be mailed to Mrs. Parsons.

The Mr. Edwards referred to in the letter was probably tied up with Winslow. I don't know him. My impression was that I had no correspondence with Mrs. Parsons until you showed it to me.

I wrote and mailed the letter of August 10, 1940, signed Wake by C. Postal; it is in my handwriting. The \$1,000 referred to in the letter is probably in payment of the stock. The money was put into the bank in the Wake bank account. None of it was paid to Edwards. We didn't sell Mrs. Parsons any stock. Aronson probably told her to [1230] send the money in. I do not know Mr. Edwards. He is probably some contact of Winslow's. We had no direct contact with Mrs. Parsons. Winslow's first sale was to Mrs. Parsons. The check for \$1,500 dated December 16, 1940, and signed by Mrs. Parsons, was received by Wake and deposited in the bank. I do not know what it was for. No stock was ever issued to her for the check—we sold her no stock for that check. Wake deposited and sent the money. The \$4,810 Wake received from Mrs. Par-

sons in 1940 was evidenced by 500 or 600 shares of Trinidad. I do not know that Edwards is Carmen, nor did I ever suspect it. Carmen told me he was convicted in Illinois. I saw his brief on appeal. The check of Mrs. Parsons dated October 5, 1940, for \$157.50 I deposited to Wake account but I do not know what it was for. Of the \$4,810 sent in by Mrs. Parsons, Wake kept \$1,950. Wake kept no record except the check stubs. Aronson was here ahead of the time Mrs. Parsons' check came in. Carmen had a deal with a Mrs. Elizabeth Pierce. The proceeds of the \$1,370 check went to Aronson.

The note for \$940 and the check for \$1,370 are part of the same transaction.

My records show we only retained \$1,950.

I assume Edwards is Edwards.

The records indicate that Wake received in 1940 the sum of \$4,967.50 from Mrs. Parsons. Of that sum Aronson received around \$3,000. Aronson came to Los Angeles once [1231] in 1940. I have the impression of sending Aronson money. The only address I have for Aronson was Brockworth and Company, New York.

Last week I remember saying I had no address for Aronson.

I do not know a Mr. Carlton, I do not know anyone by that name. We took no precautions against unauthorized persons coming in on the deal. We cleared the \$7,000 check of Mrs. Parsons for Winslow. This transaction happened while I was in New York. I gave Winslow the greater portion of it. Winslow negotiated with me before he told me

that he had a deal closed. He was rather cagey. Carman had no part in this deal. Edwards figured in the deal with Winslow.

I never had a separate deal with either Mrs. Parsons or Edwards. I had no communication from a person named Carlton in December, 1940. I have no recollection of the transaction.

A telegram of December 8, 1940, sent to George Carlton, care of the Western Union, and signed O. T., I have no recollection of sending it.

Now, on the deal in which these representations were made——

The Court: Do you want to finish this afternoon?

Mr. Lucas: I would like to, but frankly, your Honor, I am getting tired. I can go on for a few minutes more; [1232] I see it is only 4:00 o'clock.

The Court: No need to go on at all.

Mr. Lucas: Just let me finish the thought I have in mind here, your Honor, and then I will appreciate your consideration.

The Court: How much time will you want in the morning?

Mr. Lucas: Five minutes more.

The Court: In the morning, to finish?

Mr. Lucas: Not more than 20 or 25 minutes, your Honor.

Let's just go to what this man Danziger told Mr. Mainland about this wonderful English deal in which he was selling stock, bearing in mind that the record shows there was only 500 shares outstanding in England, that Trinidad International

Petroleum Company never had a dollar in the bank, that Mr. Danziger said that he was hard pressed and broke when he came back; he is telling these people about the wonderful deal of Trinidad, how they should hold on to their stock, the president and all the officers are a bunch of great men and this, that and the other.

Now, when he had a chance to speak the truth to Mr. Mainland, Mr. Mainland is trying in apparent fairness to get him to tell the story about what was done over in London, and Mainland says to him:

“Q. It isn't quite clear to me why those documents are in London. Would you go over that again? [1233]

“A. Yes. Well, I went to London some time several years ago to pick up the threads of some financing for the company that Mr. Hill had undertaken and I took with me all of the base title records of the company and made a contact there ultimately with a concern that was headed by Colonel Nicholson, the technical name of which escapes me at the minute. We entered into an arrangement where they were going to furnish the company the money to drill different wells and incident to that arrangement we submitted to their solicitors all of the title papers bearing on our property rights, and when I left London those things were left with those solicitors.

“Q. At the time you left London was that deal still alive?”

There is a question that is calculated to bring

out a clear-cut answer from a man who is in a position to make a definite and specific answer.

“A. Yes, it was still alive and yet it was—they were to furnish the money in the future at some subsequent time. I didn’t close the arrangement to completion where they were actually handing over any money.

“Q. You had merely interested them? [1234]

“A. No, they had agreed that they would do it, but they were to do it in the future.

“Q. What was the contingency upon which they were to go ahead?

“A. Well, no, there was no contingency. They were going ahead. They were going to do some financing to provide the money. They were merely underwriting and they were going ahead to raise the money in some form like a security house would raise money.

“Q. Had you discussed with them a definite plan at that time?

“A. Oh, yes. Yes, we had a verying definite plan. The details are not in my mind at the minute. I would have to get into some files to give you the details, but we agreed upon a definite plan under which they were going to furnish me money to drill different wells. They were going to furnish a sum equal to \$75,000 in American money.

“Q. I would like to know just what you meant by the statement that they would furnish money some time in the future.

“A. Well, I mean they didn’t furnish the money before I left London. I closed the agreement with

them, we will say, today and it [1235] provided that—our understanding was that they would go in the immediate future to get the money from their clients in some form. Just what form that was, I don't know. I mean how they were going to get the money from their clients I don't know. They agreed that they would furnish the company \$75,000 or its equivalent in pounds.

“Q. In consideration of the \$75,000 what were they to get?

“A. They were to get stock. They were buying treasury stock of the company.

“Q. And the result of that was what?

“A. It has never been consummated. I also had another arrangement with the same people involving the Oil Royalties Investment Trust, Ltd., and that arrangement, I guess, was, we will say, just floated out on the waves after I got out here due to some circumstances that I won't go into at the moment, and the Trinidad arrangement just didn't mature.”

Now, talking that in the light most favorable to Mr. Danziger, the fact remains that in 1935 when he came back from England the deal had floated out on the waves. It just didn't mature. But five years later in December and November of 1940 glowing letters are being written to Mrs. [1236] Parsons about this great Trinidad International Petroleum, and they are still taking money from her, when, as I say, your Honor, the record here is complete that when he returned from England in 1937 he couldn't wait any longer, as one of those

previous letters said they weren't raising the money, the market wasn't favorable to new issues, and it had floated out on the waves.

Now, your Honor, if I may be excused, then, until tomorrow morning, I will really appreciate it.

The Court: Yes.

(Whereupon, at 4:10 o'clock p.m., January 30, 1945, an adjournment was taken until 10:00 o'clock a.m., Wednesday, January 31, 1945.)

Los Angeles, California,

Wednesday, January 31 1945 10:00 a.m.

The Clerk: United States vs. Danziger.

Mr. Lucas: Ready for the government.

Mr. Rose: Ready.

Mr. Lucas: May it please the court and counsel; a few minutes more will be all that is necessary, I think for me to at least touch generally upon a few of the remaining phases of the government's case in general.

First I want to revert back for a moment to the closeness of communications which existed at all times between Mr. Danziger and Mr. Carter and disclosed not only by the testimony of Mr. Carter but by the irrefutable testimony of Mr. Danziger himself.

I refer now to Government's Exhibit 55 in evidence being a letter written by Mr. Danziger to Logan Lindley, Deputy District Attorney in Los Angeles, which contains on the bottom thereof the

notation in handwriting "Copy to OT." I remind the court that that was one of the documents that was examined by the expert and which he stated that was in the handwriting, in his opinion, of Mr. Danziger.

There is also another phase of the case that I have not as yet touched upon; that is made quite manifest from a reference to one of the exhibits, namely, 85-B which I have before me, being a part of the exhibits that touch upon the Parsons transaction. The top letter of this exhibit has the [1239] supporting data that Mr. Carter testified to with respect to the code that was originated between these two men, by which they could carry on their correspondence and keep the names of their victims more or less unknown. Mr. Carter testified about that, and many of these exhibits have on them the working out of the code with reference to the name of the victim. Here on the one which I have in front of me there has been sent to Mr. Carter the typewritten copy of a letter from Mrs. Parsons to Mr. Danziger, and the typed copy says "Elizabeth NYPQMLQ," which worked out according to the formula testified to by Mr. Carter spells "Parsons," Elizabeth Parsons.

Above that letter is a letter to the Wake Development Company by someone of the name of Thompson, because under the words "Very truly yours," we find "RFMK"; and Mr. Carter told us that that was a variant of the code he worked out, or else the code that was devised or found, picked out by Mr. Danziger.

As I say to your Honor, I don't want to refer to every one of these exhibits that contain those code notations, but many of them do. This particular exhibit which I have in front of me contains the handwriting of Mr. Danziger in the following:

"Sat. noon OT, nothing in up to Sat. noon—Bank of America phoned they have an Eastern inquiry as to market value of TIP—— [1240] I said I knew of sales in NY and abroad at around par \$5. Hope for some luck for us all—Regards JMD."

Now, before concluding this phase of the argument I want to refer to Exhibit 95, which is part of an exhibit, some of the dates of which are December 4, 1939 and November 4, 1939, the particular exhibit which I have in front of me says:

"Tuesday the 6th."

This letter, to me—and this is one that the expert testified was typed on the same machine as the others that he used as exemplars—is a letter from Mr. Danziger to Mr. Carter, written in the latter part of the year 1939, prior to any testimony by him taken before the Securities and Exchange Commission, and while the scheme was still in active operation, long after a time when he knew that the deal originally conceived or dreamed up by him had become utterly valueless. He says this to his friend Carter; first he tells about the death of his sister and makes some personal comments about himself and his sister, then he says:

"It is a pity that we can't get organized to set a deal in Canada on TIP by means of a sublease."

All of this hocus-pocus that he had been working

with contracts, contracts upon contracts or assignment of contract, and so on, pyramided or transmitted or cut around, [1241] contracts as he says in his sworn testimony. Now, he says it is a pity they can't get started on a sublease.

"There are restrictions on new issues there by foreign companies but with TIP it is a colonial deal and with a Canadian company it is a natural now especially being oil."

The war in Europe had started, and he says it would be a natural being oil.

"What a plea that has during wartime. A new setup would give control of all the stock of the new concern so that a protective market could be made on some small exchange. There ought to be some Canadian broker that would fall for such a deal and provide the money to set it up—if you could get a line on some broker maybe I could open it up by mail and then if necessary to close it I could get to Canada—I can always flag some carfare someway if the game is worth the candle. Think along this line. Be of good cheer. Maybe Xmas won't be so lean."

Now they are even setting up a new deal. Carter was acquainted in Canada, had many connections there; this South McKenzie, this Golden Quebec were Canadian concerns. He had been back and forth into Canada, all of which was well known to Mr. Danziger, and he says: What a pity that [1242] we can't get started because it would really be hot stuff now, it would have an appeal in time of war.

After he had typed that letter he wrote in his own handwriting on the edge thereof:

“Any sublease by TIP to a new company would leave TIP as is and continue any TIP sales. It would be in a position of having a fine tenant on its property—all or part.”

So, I say, your Honor, that the record here is fairly in support of the allegations of the indictment in every respect, both as to the formation of the scheme and device and as to the concert of action between Mr. Danziger and Mr. Carter. And, incidentally, I want to say that it was definitely brought out on cross examination of Mr. Carter that he was never in Los Angeles during the time of the activities here. He never met Alda Faulkner; his communication was always by mail. He had assurance from Mr. Danziger that Faulkner would carry out their instructions. And through the years you can see the close touch that existed, because you find that thread of personal interest, of friendly greeting. She adopted the form of greeting or salutation that was common between Mr. Danziger, her brother, and Mr. Carter; she writes to him, “Dear OT,” and in a friendly vein with an expression of an understanding of his problems, the necessity of raising money; she writes to him in a confidential nature and speaks of the necessity of Mr. Danziger [1243] having money, the exigencies of the situation are disquiet in a friendly way to them. So, when we have in mind the fact that there was no personal contact which develops friendship in a much faster way, at least, than by mere corre-

spondence, we know that there was the most intimate contact between these three people in a working out of this scheme.

Now then, in conclusion I want to refer the court briefly to the government's position with regard to these registration counts. At one stage of the proceedings here the court asked me to——

Mr. Rose: If I may be permitted to interrupt. You will have an occasion to refer to this subject as we go along on these counts.

Mr. Lucas: Then I will defer any action on that, if the court is agreeable, until later on.

I think then with that, your Honor, I have encompassed everything that I feel is a highlight. I realize that I have not touched every exhibit, nor do I think the patience of the court, which has been manifested throughout the case, would bear with me to touch each and every individual exhibit. If there is any feature or phase of the case upon which I have not touched, and upon which the court wants to hear something, if you will indicate it, I will be happy to touch upon it. [1244]

Mr. Rose: May it please your Honor and opposing counsel, I do not believe, your Honor, that—forensics is the proper characterization—what has been presented to your Honor, in the main, in replication of my points, is a good substitute for legal analysis and an application of legal principles to consideration of evidence.

This appeal here struck me as being one that is unfortunately resorted to in appeals to juries with the idea of inflaming prejudice and passion and

distorting every bit of evidence, and I was surprised to observe in opposing counsel's presentation to your Honor an effort on his part to actually misread reputed statements which are here in the record in the form of questions and answers, and to distort to the very antithesis certain statements made in exhibits. For example, in this Exhibit 105, to which reference is had, opposing counsel persisted in telling your Honor that Mr. Danziger's written statement here from London, shortly prior to his return, reflected that he had met with dismal failure in England, and he was returning empty-handed and broke.

As a matter of fact, the communication that he was reading from and endeavoring to interpret has this language in it, and I don't know how he can possibly, on any sane basis, advance the contention that this letter states what he claims it does. Now let's listen to what it says. It says:

"I have a firm agreement with a nice [1245] house here to furnish TIP money for five wells and then later, after production, bring it out on the market. They are organizing a public company to take in some other lands and get their money, part of which will then go to TIP."

Now, how can that possibly be construed to mean that he is returning empty-handed and with a failure? To Mr. Mainland he said he had a firm agreement, and it has been developed here that in part it was the meddling and constant bickering of the S.E.C.—and I don't blame them, because when their attention was called to some of the activities

of Warren and his henchmen, I don't blame them for getting on the job, your Honor—but it was that meddling on their part, as you will remember Mr. Danziger told them that they had caused him no end of anguish and difficulty in killing any deals that he had with these British firms, and so forth, it was their meddling in so far as the TIP was concerned.

I take the position that counsel apparently doesn't give the slightest regard to the legal proposition that inferences are to be drawn in favor of the accused and not against him. He keeps on telling this court—and he hasn't varied in one single instance from that position—that this TIP setup, its rights, its properties, and its potentialities is sheer humbug, as he puts it; it is a fraud, [1246] mullet, mullet, mullet, mullet; and yet we find that the S.E.C. in its incipient stages, at which time they were more rigid than they have ever been—they have relaxed tremendously since the occasions when they were considering this thing here, referring to Exhibit A and the registration—authorized the sale of a million dollars of this worthless security that he is talking about to the public, and approved a prospectus that outlines the thing that he says is a fabrication, namely, that 1,500,000 pounds English sterling had already been invested formerly in the acquisition of these particular holdings; and he keeps arguing here that this thing is humbug. I don't understand that. He hasn't introduced any evidence to that effect. As I pointed out to your Honor, there is no evidence here that this isn't the best potential oil property in the universe. There

is evidence here in the form of certain London and other pronouncements in oil publications, as your Honor will remember, that of speak of millions of barrels monthly being exported from Trinidad. That isn't any infinitesimal business. He speaks of the Doheny connections of Mr. Danziger, and a letter which refers to the fact that they earned over one hundred fifty million, I don't remember, in the course of years. He says that is humbug. Has he produced any evidence to that effect?

Everybody in this country, apparently, except this gentleman here, knows that the Doheny oil enterprises, in [1247] which Mr. Danziger was associated for a great many years, actually earned millions and millions of dollars. Mr. Danziger is no tinhorn promoter, as the record they themselves have produced here shows. The facts are before the Registration Committee. They never disapproved of the personnel and the assertions as to who the people were that were connected with this enterprise. Mr. Danziger is accustomed to dealing in enterprises that run into astronomical figures of millions, and everybody in this community can take judicial notice of that. He doesn't seem to be able to differentiate between the honest intentions of a man who has spent 58 years, as the record here shows, in this community, and who has been a member of the bar for over 40 years, and is still a member of the bar in good standing, and who has been connected with very large enterprises, he doesn't seem to be able to distinguish the difference between the activity of a man of that mien and

caliber, and a Mr. Carter and Warren. He seems to want to put them both in the same bed.

I want to point out to your Honor, as you view this whole record here, has there been a single instance of conduct on the part of Mr. Danziger presented here which would show a guilty conscience or show that he was apprehensive?

The truth of the matter is that the S.E.C. had no more business, legally, to go out on an omnibus expedition [1248] of examining the personal record of Wake Development Company than they would have of examining the records in my office. Mr. Danziger, a lawyer of long experience, told them that the business of Wake was no business of theirs, but if they wanted his records and papers and files, here they are. He turned them over. Does it occur to opposing counsel that Mr. Mainland and his associates wouldn't have been able to even find out to whom a sale had been made by the Wake Company if Mr. Danziger had not turned those files over, and the correspondence?

Did Mr. Danziger take the trouble to erase from his personal files and Wake Development Company any of these so-called incriminating memoranda? Did he remove from them the pencilled notations?

Counsel doesn't seem to be the least concerned about the fact that Mr. Danziger's actions were those of an innocent man, a man whose conscience was clear.

He says he had the effrontery to not return the money to McCoy when McCoy demanded it. Is that the action of a guilty man? A guilty man

would have tried to resort to the business "Well, here, you have caught us in a bum deal here; here is your money back," or work out something. That is all McCoy says he wants in that letter. But what is Mr. Danziger's position? He says, "Just a minute, gentlemen, we are no crooks, we didn't gyp you. If you were swindled by somebody, why don't you take the trouble to [1249] communicate with us and find out the facts? We are not returning this money just because you are threatening us. If you want to take it up with the authorities, proceed."

That is the conduct of an honest man; that isn't the act of a guilty person or a conniver.

He keeps on saying mullet, mullet, mullet, mullet; that is all I have been hearing in this court room. I wish he would take the trouble to find the correct pronunciation of that term if he likes it.

The Court: What is the correct pronunciation?

Mr. Rose: It is mullet.

I take the position here—for example, in reading to your Honor from the Mainland inquiries of Mr. Danziger, he tried to make it look as if Mr. Danziger said the only person that he was having any communications with was Mr. Carmen. Let's see what the facts are. Here is his answer:

"All the business I had with Great Eastern and Carmen was done by correspondence from London up to the time I arrived back in New York, and there was nothing in the nature of the business that would have made it even good business for Carmen to have taken on some other list."

Here again he speaks of Winslow in this thing here:

“At the time of this testimony you were in Europe, you have testified in this investigation your sister handled the details of the sales and correspondence with various people including Carmen.”

He assumes because this raconteur, as I will call him, has come forward and says, “I am everything that has been mentioned here, I am Roberts, I am Baker, I am so-and-so, I am so-and-so, I am Edwards, I am everybody that has been mentioned here”—he assumes that Mr. Danziger was privy to that business. There isn’t any proof to it in the way you can really say anything, except Mr. Warren confesses to the resort of that name, and we have the testimony of the witnesses that were brought in here that indicates he was traveling under those names, but even in the communications that have been presented here, if your Honor will analyze those, it becomes obvious and apparent that as far as the Wake Development Company and Danziger are concerned they are not writing to this man at all; in numerous instances they are writing about him. And he doesn’t seem to be able to analyze the difference between the first, second, and third person in a communication, and the fact that it is obvious upon reading those communications that they are not writing to the man knowingly that he is the same, that he is all things to all men, and he is all the men that we have mentioned here.

For example, take that stock transfer, I think

it was in the name of Roberts, as I recall it, that thing is [1251] witnessed by another witness, and it was transmitted. Why go through all that formality if it is a mere hoax and everybody knows he is everything?

As I say, your Honor, here he says everybody was being cheated. Let's call attention to a few outstanding observations.

The testimony developed here is that this man Carmen or Carter in the presence of a man named Kramer told Danziger that they could sell the whole issue, every share of stock in TIP, if he would stay there, and what does he do? Doesn't he go to England nevertheless? Did he say, "Well, that's fine, boys; I will hang around here and see what happens."

And at the first false move that was made in this transaction, doesn't Mr. Danziger repudiate the authority and quash it instantly both by cable and by letter and cuts the whole deal off? Does it look as if he was out to take the responsibility of these promoters?

Why only a \$20,000 escrow, and why go over to England and make the arrangement that is indicated that he succeeded in making when he returned from there, namely, the arrangement was made to drill the wells there?

Counsel doesn't seem to understand there is a distinction between Wake Development Company desiring to get a small sum of money, because all they had to gain if the whole issue were sold that was discussed or put into [1252] the agreement was

\$20,000, that is all that could be made on their part; that would be their expenses in negotiating and carrying on the real legitimate business over in England and in France and in Italy where he went that has been indicated in this record.

Does that look as if Mr. Danziger went back to New York and welcomed to his bosom this group of swindlers, when they were telling him they could sell the whole business? While Mr. Carter was neutral, as he says, he writes a letter in which he says there was no occasion to misrepresent anything, he could have sold this Pierce woman \$100,000 worth of stock with no kick in the universe. That is his own confession in writing. And he admits that his thoughts were pure at the time.

These are the things that strike me, your Honor, as outstanding. For example, has counsel given the slightest consideration to that maze of documents that are in evidence here, your Honor, 'way up to 1939, where Mr. Danziger is communicating with the Registry Division in England, with the ministers and representatives of England, with the State Department of the United States? Does opposing counsel conceive that these communications resulting finally in a change of legislation there, an official government pronouncement that they would permit Trinidad to qualify there, does he think that these activities were all resorted to with the idea of making a \$300.00 sales to a post office [1253] clerk back in Ohio or something.

I wonder if that really is in his mind. To me there is nothing more inimical than the complexes

developed frequently by prosecutors. They can't conceive that any man may be doing an honest act. Why, it is inconceivable to them that a man could write a letter and mean what he says in the letter. They see hidden and lurking in there this propensity to mulct, and they can't see anything else.

Now, I don't know, your Honor, it seems to me it is inconceivable that a man who has been a resident of this community for 58 years, and who has been a member of the bar for 42 years, would stick his neck out to become party and privy to any crooked deal of the nature and character that counsel here seems to think he so willingly became a party to. To me it is inconceivable, because what was involved? As I pointed out to your Honor, if you take an analysis of the records here, you will see that Wake Development Company in the course of a period of five years from the time that Mr. Danziger was unfortunate enough to meet Mr. Carter and his clan, for five years what did Wake Development Company realize from this T.I.P. stock that they had? About \$10,000 gross, that is all. Counsel would even saddle us with the responsibility for the doings of some admitted crook that the record shows went to jail for selling the American Can stock of a woman. And he adds that on to his figures in trying to advise your Honor of the [1254] amount of money involved in connection with these transactions.

Now, there is an illustration of how fair and reasonable opposing counsel is.

As I say, your Honor, Mr. Lucas has introduced

evidence of a letter of recommendation from Doheny, and he has introduced the structure of the personnel of Trinidad. Has he endeavored, even—now, that is my point—has he even endeavored in the slightest manner or degree to present to your Honor any proof that the assertions and statements therein contained are in any respect an exaggeration or false or untrue? No. But he tries to argue that they are necessarily humbug and not to be believed. Why? Because the defendant is on trial, and because this magnificent specimen of mankind (indicating) has come into court, and you could see how he licked his chops while he was on the witness stand, how he relished putting it over on some spinster back in New York or somewhere; he thought it was delightful. When he flashed a newspaper or something at somebody and resorted to those chicaneries and tricks, he actually relished and reveled in what a beautiful piece of work he was doing.

Now, is it conceivable, as I say, that a man who is a member of the bar for 42 years, and who has lived in the community for 58 years, and who has been connected with large and tremendous enterprises in high office, would be [1255] disposed to approve of that type of conduct and participate in it? I can't see it, your Honor, unless the man is insane.

As I pointed out, your Honor, there is a distinction between legal proof and this rabbleroxing resort to inferences by distorting facts and by disregarding clear and unequivocal statements and documents.

My position is when did this conspiracy originate? We have the language that was used. We have all of the conversations. They have jumbled together an act occurring in 1940 with no relationship and no privy to anything that occurred in '35, with acts in '38, '37, and they have attempted merely because they want to take that position to say that we were party to a conspiracy of this type. In other words, that we authorized Mr. Warren to do these things that some testimony here is that he did. I say, your Honor, there is no proof to that effect.

I don't have to argue to your Honor that the authorities—your Honor has reviewed them many more times than I have—the authorities are legend to the effect that a witness of Mr. Carter's admitted characteristics and with the benefits accruing to him here for his cooperation, that everything he says, unless it is sound and convincing, and has the ring of truth, must be looked on with the deepest suspicion, and must be rejected where any other inference can be drawn. [1256]

From the factors here before your Honor, I don't know how much credence you put in the testimony of Mr. Carter, I don't know; your Honor has had a great deal more experience than I have, and I don't know what your reaction is to him, but if your Honor is interested I will tell you what mine is. I am frankly convinced that man couldn't tell the truth if he wanted to. He apparently has the native intelligence that if he didn't go off, if he would have stuck to that Y.M.C.A. and church training of his, he probably would have been a very

successful and brilliant man. He has those potentialities and the physical characteristics that could have been utilized there. But for some reason or other he seems to delight, it is a sort of psychotic sadism, as I observed it, in which he takes delight, as we say in the vernacular, in putting it over on someone.

You will remember in his discussion with Mr. Danziger he admits that Mr. Danziger says there is no occasion in the world to misstate or exaggerate anything in this deal; this is a clean deal with tremendous potentialities.

Now, in passing, as my mind wanders over this maze of evidence and the arguments advanced by opposing counsel, he talks about a letter going out in 1940 in which Mr. Danziger still evinces a disposition to believe that the Trinidad International Petroleum has a great future. It doesn't occur to him that Mr. Danziger was still working at that time earnestly and legitimately trying to actually get [1257] money because he believes in the merits of that enterprise. And, as a matter of fact, your Honor, up to the time we started the trial here he was still working on it.

He says, for example, he interprets that letter that he read about why can't we get Canadian brokers, this is a colonial enterprise and they could put up the money for oil and so forth, he assumes that the idea there was to go out and swindle the Canadian brokers and the Canadian financiers; he doesn't assume that they may have intelligence enough to investigate this thing before they put

any money into it; he doesn't assume that the S.E.C. organization must have given considerable thought to the material set out in Exhibit A here before they authorized this group to go out and raise, I believe, a million dollars from the public with the blessings of the S.E.C. The S.E.C. passed, in 1934, the prospectus, making reference to the thing that your Honor called my attention to, that seven and a half million dollars prior investment in the enterprise, except as I pointed out to your Honor it is set out in that material as a million and a half pounds sterling, and your Honor will take judicial notice that there is a propensity for us in this country to speak of a pound as five dollars. We know, of course, there is a fluctuation there and the pound varies as distinguished from our five dollars, but I mean that is an expression that is resorted to sincerely not for the purpose of deceiving anyone, but when we speak [1258] of a pound we speak of five dollars. And when you speak of one million and a half pounds sterling, and you were to transpose that into American currency, you would refer to it as seven and a half million, five times that amount.

I do not wish to take time, your Honor, in bickering and rebickering and in arguing this matter. After all, your Honor in the last analysis is going to give expression to what you believe the evidence here reflects not from the mental approach of opposing counsel, I am sure, but I take the position in view of their delay in bringing us to trial for over a period of three years—that is, to even arraign

us for over a period of three years—in view of making it necessary, as I have addressed this court in the beginning, making it difficult for us to bring in witnesses or evidence in this case to show the bona fides of the activity of Danziger in England, as I say it is a very easy thing for Mr. Carter here or Warren—that is his name he says—it is a very easy thing for him to get up here, your Honor, after he has made a deal to become state's evidence and say, "I wrote a letter to Mr. Danziger in which I told him so and so." Does he produce even the carbon copy of such document? Is it possible for us to determine—if your Honor wants to believe him, of course, I recognize that judicially you have that power, you can believe every word he said regardless of how fantastic I think it is in many respects, and you can accept, I think, if you choose to, his statement [1259] that "I wrote a letter to Danziger in which I told him I am a big crook, I have just swindled so and so out of this, and I expect to go back and take the coal out of their cellar next week, and Danziger wrote back O.K." But where is the letter Danziger wrote? "I don't know. I destroyed it, it got lost." And yet he comes up here, amazingly, with even a draft memorandum concerning the very earliest stage of this deal, this Delaware deal with the Gas Company, an original draft, your Honor, of a pen and ink notation with expurgations there of a proposed communication that wasn't even sent out until more than a month after Danziger or two months after Danziger is in Europe.

Now, that is a very interesting insight to me, your Honor. Apparently he is a student of the philosophy of Lord Henry in Oscar Wilde's "Picture of Dorian Gray" in which he says, "Never write a letter and never destroy one." Apparently he adheres to that philosophy.

He refers to Kramer in that letter that he wrote during the month of October, 1935, as having a warped mind, and yet your Honor will observe how cagey this individual is. And, as I say, if we draw a legitimate inference from some of these communications, you will find it is apparent, you must conclude, your Honor, that it is apparent that this man here wouldn't deal straight with anyone. He was using aliases against himself. How he ever kept up with them I don't know.

Now, he did admit he had henchmen, he kept no record of [1260] these names that he used in these various transactions.

Now, what was his demeanor here on the witness stand, and then I am going to conclude. In the incipient stages of his testimony, your Honor, he kept referring that he communicated with Wake Development Company; then the next day he comes on after he has had a recess, and of course that wasn't possibly the result of any conference, he suddenly begins saying Danziger, Danziger, Danziger.

"Who did you get this from?"

"Danziger."

Not Wake Development Company, but Danziger.

"Who did you send this to?"

“Danziger.”

That was that change of pace. He evinced, to my mind, then that some statement in one of these exhibits had some substance to it. In other words, he seemed to be anxious to smear Mr. Danziger, very anxious to accomplish that end ruin the man's reputation.

I don't have to tell your Honor what a possible conviction in this case would mean to a man of his age with as long a residence here in this community, and his being in good standing as a member of the bar for over 40 years. I think your Honor should, as I believe you will, and in my opinion it would be a proper judicial act on your part, in view of all the facts and circumstances and the record here, [1261] to pass favorably upon this motion in behalf of the defendant Danziger at this time.

That is the only motion that is before you; I submit it.

The Court: It is 5 minutes to 11:00. I will reserve ruling on this motion which is directed to the first count, and then we will proceed to deal with the other counts at the end of the morning recess.

(Short recess.)

Mr. Rose: Your Honor, at this time——

The Court: Go ahead and give me all of your remaining motions, Mr. Rose.

Mr. Rose: Very well, your Honor.

At this time I am addressing to the court a motion to quash and annul—yes, I have it—Count 2

of the indictment herein—wait a minute. I will withdraw that, your Honor. °

I submit to your Honor a motion to quash and annul Count 1.

The Court: You hadn't stated that?

Mr. Rose: No, I hadn't, your Honor. I thought I neglected to address that motion to the defendant Trinidad International Petroleum, Limited, a Nevada corporation, upon the grounds, in addition to the analysis of the evidentiary matters and contentions contained and set forth in the indictment as presented in the motion in behalf of the defendant J. M. Danziger, individually, and I incorporate those matters [1262] by reference, and add the ground that there is absolutely no evidence that this corporate entity at any time participated or was a party to the alleged conspiracy set forth in Count 1.

The Court: Decision will be reserved on that motion.

Mr. Rose: I now present to your Honor a motion to quash and annul Count 1 as against the corporate defendant Wake Development, a Delaware corporation, upon each and all of the grounds heretofore submitted in support of the motions on behalf of the defendant J. M. Danziger, individually, and the Trinidad International Petroleum, Limited, a Nevada corporation, and adopt all of the grounds presented in behalf and in support and as grounds for the granting of said motion.

The Court: Decision will be reserved.

Mr. Rose: At this time, your Honor, I move in behalf of the defendant, individually, J. M. Dan-

ziger, to quash and annul and set aside Count 2 of the indictment upon the following grounds: Count 2, in addition to merely realleging and incorporating by reference—they don't say it, but we will assume that is what it means—all of the allegations of Count 1 except the last two paragraphs, this count purports to make it an offense and alleges the violation of the laws of the United States, particularly Section 17 (a) (1) of the Securities Act of 1933, by the allegation the defendants, in the plural, on May 8, 1939 in the sale of [1263] Florence Lawyer placed in the mail in this jurisdiction a letter, that letter is set forth in the form of a facsimile, or, rather—it will show you what happens to your mind; I can't think of what they call this process for the moment.

Mr. Mainland: Photostat.

Mr. Rose: Photostat of a letter bearing Los Angeles postmark of May 8, and addressed to Mrs. Florence S. Lawyer. This letter, your Honor, on the letterhead of the Wake Development Company, and bearing the signature of "A. Faulkner" merely states: We acknowledge receipt of your letter of May 3rd with enclosure of certificates, specifying certain shares of the Golden Quebec Mines stock, and your check in the amount of \$390.00, and certificate for 1113/7ths shares of Trinidad International Petroleum, Limited, stock and units of preferential profit sharing notes will be forwarded to you by registered mail within a few days.

I submit, your Honor, that that reputed act apparently is designed to be an overt act in fulfillment

of a conspiracy. This multitude of allegations adopted by reference. But, I submit, your Honor, that the sending of this letter cannot possibly legally be construed as being an unlawful act or the use of the mails as defined by said Section 17 (a).

The Court: Mr. Lucas, will you give your characterization of 1 and 2? You don't need to get up.

Mr. Lucas: Yes, your Honor.

The very closing words of the letter itself show it is well within the statute—— [1264]

The Court: No. What are 1 and 2? What kind of counts are Counts 1 and 2 by the government?

Mr. Lucas: Those are Securities Act counts. And the very closing words of the letter——

The Court: They are not mail fraud counts?

Mr. Lucas: No; there is a companion mail fraud count. Count 15 is a companion to Count 1, but they are Securities Act counts, and the very closing part of the letter brings it within the statute.

The Court: That is what I wanted from you now. Continue.

Mr. Rose: Your Honor is undoubtedly familiar with 17(a) of the Securities Act of 1933 as amended, or shall I read it to your Honor?

The Court: Don't assume that I am familiar with too much, Mr. Rose.

Mr. Rose: The charge in this particular count, your Honor, is set up as an alleged violation of Section 17 (a) (1) of the Securities Act. Now, this Act is in the form of a mail fraud statute in that it says:

“It shall be unlawful for any person in the sale

of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—” [1265]

Subdivision (1), which is the one that we are relying upon:

“to employ any device, scheme, or artifice to defraud, * * *

I submit that by no stretch of the imagination can this letter, and I have read it, be deemed or regarded as the use of the mails as defined by Section 17 (a) subdivision (1).

The Court: Where do you think that would be in U.S.C.A., what volume? [1266]

Mr. Rose: U.S.C., Section 77q, Subdivision (a).

The Court: Is that in the main part or in the back of the book, do you know, Mr. Lucas?

Mr. Lucas: It is in the main part.

The Court: 77q—

Mr. Rose: It is 77q, Subdivision (a).

The Court: What page?

Mr. Lucas: 456.

The Court: 77q, which is entitled “Fraudulent Interstate Transactions?”

Mr. Rose: That is correct.

The Court: (a) reading:

“It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—”

Now, you proceed, Mr. Rose.

Mr. Rose: "to employ any device, scheme or artifice to defraud."

I don't think it would be very helpful to your Honor, but I may make the observation so you would have my theory about it, I would construe that statute to be a statute on a specific offense where interstate transportation is used in perpetrating a fraud.

Now, this particular act here, your Honor, is the [1267] sending of this particular letter. Now, the letter is an acknowledgment of a receipt of some money, and it merely declares that they are going to send some stock by other mail, and it is an act of the Wake Development Company.

There isn't anything that I can find in this count or in this act that would constitute a public offense. Certainly it is no public offense on the part of the defendant J. M. Danziger, in whose behalf I am relegating this motion, it isn't even his act, and isn't the character or type of an act denounced by the Code or by the Securities Act.

In other words, I say I have received your check, and so forth, and I am going to send you some mail. They are not going to try to sell her anything here. Whatever transaction has already taken place has already taken place not through the use of the mails or the use of any form of interstate transportation. There isn't any evidence here on the part of Lawyer, anyhow. The only thing we have is the statements that Warren testified to in his transactions with her. But that isn't what is charged here. They are attempting to set up a substantive offense as a distinct

crime by the sending of this particular communication.

In other words, I have in mind, your Honor, so your Honor will not think I am confused on the legal ramifications of this, that overt acts where a conspiracy has been established committing a particular crime, I recognize that [1268] each overt act is a separate offense; I am not in the least bit confused about that. But I submit that there is no evidence whatever to hold or charge, even, the mailing or the participation in any manner or respect, of this particular communication, on the part of Danziger, and I submit it on those grounds.

They are trying to make a substantive offense an overt act. At least they don't charge it. If we construe the language——

The Court: How many counts like this are there, Mr. Lucas?

Mr. Rose: Quite a few.

Mr. Lucas: Counts 1 to 8, inclusive—pardon me, counts 1 to 7, inclusive.

The Court: How come you are not making the same point as to count 1, Mr. Rose?

Mr. Rose: In what respect? Count 1, your Honor, sets up—you mean by that letter that they attach?

The Court: I am just asking you that question. How come you are not making the same argument as to count 1 that you are now making as to count 2?

Mr. Rose: Count 1, your Honor, is this omnibus allegation——

The Court: That is incorporated by reference in count 2.

Mr. Rose: I don't think it is incorporated by reference, except I say it might be construed——

The Court: You claim it is? [1269]

Mr. Lucas: Yes, undoubtedly.

Mr. Rose: They do say: "we allege and incorporate, as if here set forth at length, the first count of this indictment except the last two paragraphs thereof:"

I don't know, in the light of the construction of the language in an indictment, I think they might very properly construe that as sufficient assertion of making a part of this count 2 all of the matters of count 1.

The Court: Except the last two paragraphs?

Mr. Rose: Yes.

The Court: Which pertain to the particular person named there, Mrs. Parsons.

Mr. Rose: Yes.

The Court: My question is how come you didn't make the same argument as to count 1 that you are now making as to count 2? I am asking you not to create any difficulty, but I am asking for information.

Mr. Rose: I don't think I have fully argued count 1. I thought I would generalize and set forth my grounds of my motion to your Honor, and your Honor would, necessarily, conclude that I am advancing the same argument. In other words, if I haven't I want to make it clear to your Honor that my position is——

The Court: You are saying to me now that the letter describing count 2 is not in and of itself deceitful, let me [1270] use that word, you are saying it is just a letter of transmittal of some stock?

Mr. Rose: It is not an act that might be relegated as an overt act in carrying out a conspiracy, because there is no contention that there ever was a discussion or a conspiracy, in fact, as alleged in count 1 or at all, whereby it was part of the so-called or alleged scheme to transmit a letter of this character; that such an arrangement and agreement would per se not be of a criminal act or character.

The Court: I better hear you, Mr. Lucas.

Mr. Rose: What I want to point out to your Honor is this: They have attached the letter to the tail end of count 1, and I am glad your Honor called my attention to that. As I said, this is a rather amazing potpourri, this first count, but I find that they wind up, in fact—frankly, your Honor, I didn't observe that, because this letter here that I have to reattach, it became loose here—frankly, that is why I took a little time in the beginning here making that motion, I thought this letter here was count 2, but I find now, your Honor, that the conspiracy that is alleged in count 1 purports to be and is alleged to be a violation of section 17(a) subdivision (1) of the Securities Act. Now, frankly, your Honor, this is the first time I had any idea that that is the theory of this conspiracy.

The Court: That the first seven counts are—what do you call that act? [1271]

Mr. Lucas: Securities Act of 1933.

The Court: Is that the short title of it?

Mr. Lucas: Yes.

The Court: The first seven counts are Securities Act counts, we will call them that.

Mr. Lucas: Yes. And that is the violation of the basic provisions of that act in using a scheme to defraud.

The Court: So much for your first seven counts. Then how many counts and what numbers are they that are mail fraud counts?

Mr. Lucas: 12, 13, 14, 15, 16. 8, 9, 10 and 11 are registration counts, as we refer to them. 17 is the conspiracy.

The Court: Do you have companion mail fraud counts to each of the 7 Securities Act counts?

Mr. Lucas: I don't say in each one. For instance, the companion count to count 1 in the mail fraud is count 15; companion count to count 2 is 9 and 14, there are two companion counts there; count 3 carries the companion count of count 10; count 4 has no companion count; count 5 has the companion count of count 11; count 6 has the companion count of count 16.

The Court: All right.

Mr. Rose: I desire to add, with the court's permission, to the grounds submitted in support of the joint several [1272] motions, singularly, in behalf of the three defendants, two corporate and Mr. Danziger, the grounds for the motion for the quashing and dismissing of count 1, that the evidence is wholly lacking and wanting in establishing that the use of any interstate transportation or mails or any-

thing transmitted therein was in legal contemplation or pursuant to Section 17(a) subdivision (1) of the Securities Act of 1933 or 15 U.S.C. 77q subdivision (a)(1) a violation thereof, in that it affirmatively appears, one, that the securities involved in any of the transactions herein referred to or alluded in the testimony. The record evidence shows that it was, one, the personally owned stock of the Wake Development Company, and that the communications utilized both—that is, the interstate communications utilized or resorted to were per se not fraudulent or in any manner or respect a device, scheme or artifice to defraud, either under the Securities Act of 1933 or the amendments there at that time existing or of the code specified in said indictment. I desire to add that as grounds.

The Court: It may be added. Pardon me, now, Mr. Rose. Mr. Lucas, do I understand the government to take the view that the Securities Act, with which, incidentally, I have never dealt before in a criminal prosecution, is roughly, I may say, the same as the mail fraud statute in this respect: that any one, any group of defendants—it would [1273] be a group, because we have several here—any group of defendants who enter into a scheme to defraud by the sale of securities, and thereafter employ the mails in carrying it out, that that is a violation of the Securities Act?

Mr. Lucas: Yes, your Honor stated it very clearly.

The Court: It is very close with the mail fraud?

Mr. Lucas: It is construed by the courts exactly

parallel, you might say, in every particular with the mail fraud statute.

The Court: Let me state it another way, then. If the subject matter of a prosecution is securities, the evidence which would support a mail fraud prosecution will support a prosecution under the Securities Act?

Mr. Lucas: Right; other elements of the offense being present, it is exactly the same.

The Court: You don't need to drag that in. The mail fraud statute covers other things than securities.

Mr. Lucas: Yes.

The Court: All right, then. My question, again, is if the subject matter of a prosecution happens to be securities, then the evidence which would support a prosecution under the mail fraud statute will support a prosecution under the Securities Act?

Mr. Lucas: If I understand your question, yes. The answer is yes.

The Court: Under the mail fraud statute if two or more [1274] enter into a scheme to defraud, and use the mails to execute it, that is a mail fraud prosecution?

Mr. Lucas: Yes.

The Court: Your claim is if two or more enter into a scheme to defraud by the sales of securities, and use the mails to execute it, that is a violation of the Securities Act?

Mr. Lucas: Yes, that is as I understand the law, and that is what I am going to maintain before you in my turn for argument.

Mr. Rose: He maintains it, all right, but I am quite sure that he hasn't furnished your Honor with any authority, nor can he, that that is the fact.

This act here, the Securities Act, and the U. S. Statute, expressly under subdivision (c) withdraws the exemptions provided in Section 3, claiming that that doesn't apply. This section pertains and relates to the use of mails or interstate transportation in the proceedings and process of defrauding a person in the sale of securities, irrespective of whether it is subject to registration or anything else, and it is not analogous to or intended to be a separation of the use of the mails or interstate transportation facilities in distinguishing between the sale of a security or bond from any other matter at all.

This is using the mails in a scheme to defraud through the use of those particular forms of communication, and [1275] it is a distinct and specific offense, and the statute relegates itself to the use of the mails as it is there defined: "to employ any device, scheme or artifice to defraud."

It says, " * * * in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly."

In other words, it is the use of these facilities in perpetrating a fraud. They have made a lot of allegations here, but as I point out, I don't know how they claim that the mails were so used—unless your Honor should hold and conclude that the so-called rights phase of this transaction, where a person was given the right that they were at liberty

to exercise, was a fraudulent device—and I don't think there is anything here in this record, from the standpoint of rules of evidence, or from a consideration of the thing itself, that could be called a fraudulent device, that is, something to defraud any one.

The Court: I am not sure that you stated your motion as to count 2.

Mr. Rose: I was in the process of stating it, your Honor, when your Honor called my attention to one phase of count 1, for which I am very grateful, which I inadvertently overlooked. [1276]

The Court: We better go back to count 2, then. You better begin again with your statement of the motion. That is the Lawyer count.

Mr. Rose: In behalf of the defendant J. M. Danziger as an individual defendant, I move that count 2 of the indictment be annulled, quashed and dismissed upon the following grounds: One, that the evidence is wanting and lacking in supporting each of the allegations which are purported to be adopted by reference as a part of count 2, and that the act as set forth, namely, the transmittal of the particular letter of which a photostat is attached and made a part of the allegations of count 2, is not such an act as is contemplated by Section 17(a), Subdivision (1) of the Securities Act of 1933, and its analogous statute, namely, 15 U.S.C.A. 77q (a), subdivision (1). And in addition to all of the grounds previously submitted with relation to that portion as to the charge in count 1 which have been presented in support of dismissal of count 1, I here-

with reallege and I particularly point out that there is no evidence whatsoever that defendant J. M. Danziger in any manner participated in, was privy to, acquiesced, or was a party to the placing of the particular letter therein set out in the mails, or at all; that said letter on its face shows that it is not the act of the defendant Danziger, that it is not the fact. It affirmatively appears, and testimony shows, one, that this letter was prepared and [1277] written by the secretary of Wake Development Company, and if by any one that she placed it in the mail. There is no evidence that she even placed it in the mail. And it, manifestly, cannot, under any sound hypothesis, be based as an overt act of this reputed conspiracy that counsel has represented to your Honor as taking place in 1935. And upon all of the grounds I submit that motion as to count 2 on behalf of the defendant J. M. Danziger.

The Court: That decision will be reserved.

Mr. Rose: Now, your Honor, in behalf of the defendant Trinidad International Petroleum, Ltd., a Nevada corporation, a defendant herein, I submit the motion to quash, annul, and set aside count 2 upon all of the grounds heretofore submitted in respect to count 1, which are incorporated by reference and made a part of this motion, and upon the special additional ground that there isn't a scintilla of evidence that defendant Trinidad International Petroleum Company in any measure or respect had anything whatsoever to do with that letter, or that that letter pertains or relates to any purported act on the part of said corporate defendant.

The Court: Decision is reserved.

Mr. Rose: I submit to your Honor a motion to dismiss, quash, and annul count 2 upon each and all of the grounds heretofore submitted in respect to count 1 and in support of the quashing of count 2 previously addressed to this court [1278] in the motion in behalf of the defendant J. M. Danziger and Trinidad International Petroleum as it may pertain or relate to the defendant Wake Development Company.

The Court: Decision is reserved. Now, proceed to count 3, Mr. Rose.

Mr. Rose: At this time, your Honor, on behalf of the defendant J. M. Danziger I move to quash, dismiss, and annul count 3 upon the following grounds: In so far as the reiteration by reference of all of the parts of count 1, which is set forth in the second paragraph of count 3, which embraces a reallegation of all of the matters and things set forth in count 1 save and except the last two paragraphs, I adopt by reference each and all of the grounds heretofore submitted in support of the motion as to that part of the indictment, and I further interpose and add to that in support of the motion to dismiss count 3 as to the defendant Danziger that the act, to-wit, namely, that on January 19, 1939, and it does say in the sale to Harry F. Pitts, that the placing of the letter set forth in facsimile through a photostat, that the matters and things contained in said communication are not such an act as is proscribed by Section 17 (a), Subdivision (1) of the Securities Act or of 15 U. S. C.

Section 77q, Subdivisions (a) and (1). And here, again, is a communication which on its face shows it was a letter of the Wake Development Company bearing the signature of "A. Faulkner" as secretary, and that said act [1279] and said communication in contemplation of law does not constitute the commission of the offense purported to be charged by the Section 17 (a) or the United States statute referred to, and that there is no evidence to connect the defendant Danziger personally with the transmittal of this particular letter, nor can it be deemed to be a part of the reputed conspiracy represented to this court as having been formulated in 1935.

The Court: Decision is reserved.

Now, Mr. Rose and Mr. Lucas, I have been asked to go with the district judges to one of the bar meetings this noon, and I have just been sent word that we need to leave early, that they are waiting for me, so we will resume at 2:00 o'clock.

Mr. Rose: Thank you, your Honor.

(Whereupon, at 11:45 o'clock a. m., an adjournment was taken until 2:15 o'clock p. m. of the same day, Wednesday, January 31, 1945.) [1280]

Los Angeles, California,

Wednesday, January 31, 1945, 2:15 p. m.

The Court: You had just moved under count 3, Mr. Rose, to quash in behalf of defendant Danziger.

Mr. Rose: If your Honor will permit us, apro-

pos of the subject that was discussed in general between your Honor and opposing counsel just before the recess, it brings a certain thing to my mind that I would like to state to the court, if you will permit it.

Frankly, your Honor, I have been puzzled here at various stages of this trial to comprehend even with some degree of certainty the theory of the government's case. We know as a legal concept in principle the matter of *expressio unius est exclusio alterius*.

In this case the form of conspiracy charged is specifically identified as a purported violation of Section 17(a), Subdivision (1) of the Securities Act of 1933 and of the U. S. Code Title 15, Section 77q, Subdivision (a). Now, from counsel's observation made to your Honor, I am under the impression that he thinks he is in a state court trying one of these omnibus so-called conspiracy cases in which the acts, omissions, commissions and deceit, and so forth, constitutes an offense; now, for example, taking the admission of Mr. Warren here, in all of the transactions concerning which he testified he committed the offense commonly known as grand theft by trick and device, or he [1281] committed the offense of obtaining money under false pretenses, all offenses concerning which, and each of them, he would be subject on his own confession and admission to indictment, trial and conviction in the particular communities in which he committed these offenses.

On the other hand, the question that occurs to

me, your Honor, is this: that is no concern of the United States. As I pointed out, we are not dealing with the so-called offense concerning which your Honor made inquiry, namely, the use of the mails to defraud. This offense here, your Honor, as outlined in the Securities Act and in identical nomenclature in the U. S. Code, is a substantive specific offense; it has its identity and it has its parts.

Now, what I have in mind is what it says here. I hope your Honor doesn't think I just want to take up time, I am not going to go back to this, but I would like to make my position clear so when opposing counsel replies he will have an opportunity to address the court on the point of law that I am trying to background and relegate these particular motions.

A substantive offense: "It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—" and subdivision (1) is the particular section of this offense: "to employ any device, scheme, [1282] or artifice to defraud." Now, that is the offense charged so far as we have covered these particular counts.

Now, your Honor, we know it is elementary that a conspiracy to commit a particular offense is of itself an offense. Conspiracy to expropriate on the sidewalk would be an offense, that is the conspiracy. Now, my point is this: This section, necessarily, contemplates a scheme and device to use interstate commerce facilities communications and transpor-

tation, that is, the use of mails, in a scheme to defraud in the sale of securities.

Your Honor, the tail end of this section, subdivision (c) specifically outlines that the exemptions provided in section 3 shall not apply to the provisions of this section, meaning that it doesn't make any difference whether the security is subject to registration under the Securities Act or at all. In other words, this is a separate and distinct offense.

The Court: You might call it a federal blue sky act?

Mr. Rose: That is correct, your Honor, that is exactly what it is. It is a substantive offense, the conspiracy of which would constitute one offense, and the particular transactions in each and every instance would constitute an offense, and the overt acts of each as part of that conspiracy would constitute a specific offense.

Now, without taking too much time, here is a very brief part of a case that I am going to submit to your Honor for [1283] consideration. I am submitting the case of *United States v. Monjar*, reported in 47 Fed. Sup. at page 421. This deals with 77q, the specific form of offense that we are talking about. It says:

"The first count, however, does not allege that the mailing of the letter referred to therein was 'for the purpose of executing said scheme and artifice to defraud and for the purpose of obtaining money and property by means of false and fraudulent pretenses, representations and promises and

attempting so to do * * *.' It is therefore not sufficient, and I sustain a demurrer as to it. In fact, the government concedes that the defect in Count 1 exists. However, the government may still utilize count 1 as a 'reference' count, so that the remaining counts of the indictment can incorporate the scheme set out in count 1."

Citing two Circuit Court cases.

Now, my position, your Honor, is this: We must be cautious in considering from a legal standpoint and not from an appeal to passion and prejudice the state of the evidence in so far as it may be deemed to apply to the alleged offenses committed here and set forth in the indictment, and in doing so we must separate and eliminate from consideration in this case the particular grand thefts and larcenies committed by Carter in these several states, because obviously this substantive offense pertains to the [1284] use of those facilities in interstate commerce, a scheme to defraud by means of those facilities.

Now, then, what have we in connection with this scheme here? If your Honor should hold that, for example, the so-called letter that went out under the Trinidad letterhead, after Mr. Danziger had departed for Europe, whether the arrangement to send out that letter comes within the purview of subdivision 1 of this section, namely, to employ a device, scheme or artifice to defraud; now, that is what is alleged to have been the scheme here, that they used that. Now, what is the record evidence in connection with that, your Honor? That device,

if it may be called such, was a result of what? An agreement between the Great Eastern Gas Company, a Delaware corporation, with its President DeHart and others, in which this trust company in Delaware was a party, and it is not a scheme between Carter and all of the so-called aliases and these defendants. And if they held and claimed that that was a scheme in violation of this substantive act, they do not allege it and they haven't brought in the proper parties. In other words, they have attempted to charge us with a scheme in the utilization of mail concocted in 1935 to use the mails and telephones, and haven't offered one word of testimony in support of that contention. They don't even allege it. And they don't say that the mails were used, as I pointed out in this case to your Honor. They are trying, as I say, [1285] a conspiracy allegedly in which they are trying to tie in everybody, which would constitute a conspiracy to commit theft or larceny by trick and device.

Now, as far as the use of the mail, that part of the so-called scheme which comes within the purview of the act, your Honor would necessarily have to find that the employment of that right privilege pursuant to a contract in writing between the Great Eastern Gas Company and the Trinidad Company was a conspiracy between those two corporate entities. Danziger would be deemed under the rules of evidence, if that act be deemed as a violation of this section, to be acting in behalf of the corporate defendant Trinidad Company. Now, if the

conspiracy, so-called, alleged to have been entered into in violating the substantive offense, the letter of the Wake Development Company asking them if they had exercised that right, would be deemed an act to defraud, that is a different story.

Now, that is the thing that I have in mind. I have been puzzled to know the theory of the government's case here. He made a speech here about the fact that what is his name? flashed a newspaper, and he pointed to Trinidad and stuck it in his pocket. All of that would be fine if we were trying a case here against Carter for grand theft by trick and device.

The Court: What I would like for you to do would be to complete your motions as to the first seven counts, which [1286] counsel says are laid under the Securities Act, and then we will ask him to state his theory as to them on the record; but I would like to get these motions down.

Mr. Rose: Very well. Do your minutes reflect that I completed a motion as to count 3 on the defendant Danziger?

The Court: As to the defendant Danziger, yes.

Mr. Rose: I now, your Honor, address to the court a motion as to count 3 of the indictment in behalf of the defendant Trinidad International Petroleum, Ltd. on the ground that the transmittal of said letter, a facsimile of which is set forth and made a part of said count 3, is on its face not an act of the Trinidad Corporation, and that the transmittal of said letter does not constitute the commission of any offense as contemplated by Section

17 (a), Subdivision (1) of the Securities Act, or Title 15 U.S.C. Section 77q (a) as charged in said count.

The Court: Decision is reserved.

Mr. Rose: And may I adopt by reference each and all of the matters advanced in connection with a motion to quash said count 3 by incorporating the matters and things heretofore submitted in behalf of the other defendants on the ground that said purported act on the part, reputedly, of the Wake Development Company does not constitute a public offense or a violation of said substantive act 17 (a), [1287] subdivision (1) and 77q of Title 15 U.S.C., Subdivision (1), and I move that that motion be acted upon on said count as pertains to said defendant.

The Court: Decision is reserved. Now, count 4.

Mr. Rose: Your Honor, as to count 4 of this indictment I submit to your Honor a motion in behalf of the defendant J. M. Danziger, individually, that said count be quashed, annulled and dismissed upon the following grounds: As to the attempt to reallege and incorporate the first count, I submit to your Honor without repetition the reasons and the matters presented in support of that particular count and that portion of the count in the preceding counts as if said grounds were restated at this time. And in addition thereto, upon the ground that the reputed offense set forth in said count is relegated to, other than the reference reallegations, to a reputed act of the transmittal on or about the fifth day of January, 1939

in the sale to F. A. Russell of a letter bearing said date. In this regard I submit that said letter on its face does not purport to be an act committed by or at the solicitation of the defendant Danziger; that said act does not contemplate or on its face purport to be a violation of Section 17 (a), Subdivision (1) of the Securities Act as charged, nor the identical act set forth in Title 15 U.S.C. 77q, Subdivision (a), upon the ground that said count fails to charge that the transmittal of this letter was, and the purported mailing [1288] thereof was for the purpose of executing a scheme of the character contemplated by said acts and for the purpose of executing said scheme and artifice to defraud, and for the purpose of defrauding the property by means of false and fraudulent pretenses and representations.

In this connection I call your Honor's attention this is the first of a series of letters referring to a mining stock transaction, and the testimony in this case on the part of Warren states that he never discussed with Mr. Danziger or any of the other defendants the subject of Canadian mining stock.

Now, that is the state of the record. If counsel can point anything out to the contrary I would like to know where it is. On each and all of the several grounds I submit the motion.

The Court: Decision is reserved.

Mr. Rose: I now move in respect to said count 4 that the same be quashed, dismissed and annulled as to the defendant Trinidad International Petrol-

eum on the ground that there are no allegations that the said transmittal of said letter was at their instigation or on the ground that they participated in it in any respect, and incorporate all of the other grounds heretofore addressed in support of said motion.

The Court: Decision is reserved.

Mr. Rose: I submit the same motion upon all of the [1289] grounds stated as to the defendant Wake Development Company.

The Court: Decision is reserved. Now, count 5.

Mr. Rose: As to count 5, I submit to your Honor a motion on behalf of the defendant J. M. Danziger as an individual that said count be dismissed, quashed and annulled upon the grounds, one, that—in that connection, I incorporate by reference each and all of the matters addressed to that portion of count 5 that I have heretofore submitted, which portion purports to adopt by reference count 1, and in addition thereto, and especially, I submit that the purported allegations therein which seek to do charge that on September 13, 1939 there was placed in the mails to Adeline B. Skinner in the sale of securities a check for \$300 drawn on the Farmingdale New Jersey Bank in violation purportedly of Section 17 (a), Subdivision (1) of the Securities Act of 1933 and 15 U.S.C. Section 77q (a), Subdivision (1), and that there isn't a word of evidence that said check was deposited in the mail by the defendant J. M. Danziger.

In that connection I submit to your Honor that

the depositing in a bank of a check could not be deemed and contemplated as the commission of any offense. It wouldn't matter to the government whether this check was sent to Farmingdale, New Jersey, by pony express or by a man on a bicycle, and so far as we know by any competent evidence there isn't anything here to show who put this in the mail, except we may infer from the testimony of this bank clerk [1290] who says that his records reflect this check was placed in that Bank of America here for collection. There isn't any testimony to show how this check got back to Farmingdale, New Jersey. Nobody has testified that it was sent back there by mail or by means of any interstate transportation over which the government has any control.

Frankly, I am very much puzzled about how the encashment of a check can constitute an offense in violation of the laws of the United States. I merely make that by way of observation in addition to my other grounds and reasons for the motion.

I submit that motion to your Honor in behalf of the defendant J. M. Danziger.

The Court: Decision is reserved.

Mr. Rose: I now submit to your Honor a motion on behalf of defendant Trinidad International Petroleum on all of the grounds heretofore set forth and presented both by reference and with particularly to said count in behalf of the Trinidad International Petroleum Company, and on the further ground there is nothing whatsoever to indi-

cate that they were in any manner privy or participated in the encashment of this check in any manner or means.

The Court: Decision is reserved.

Mr. Rose: I incorporate by reference and submit all of the matters and the grounds submitted in support of the motion to dismiss this particular count and such matters as [1291] have been presented collateral thereto by reference to former grounds specified and applied to the former counts and count 1 in behalf of the defendant Wake Development Company, and on the further ground that the encashment of said check cannot and does not constitute a violation of any of the sections or statutes recited in said count as an alleged violation.

The Court: Decision is reserved.

Mr. Rose: As to count 6, your Honor, I now submit to your Honor a motion in behalf of the defendant J. M. Danziger to quash, annul and dismiss count No. 6 of this indictment upon each and all of the grounds heretofore submitted in respect to that part of count 1 adopted by reference as heretofore submitted in connection with count 1 and amplifications of grounds for dismissal of said count 1 with the same force as if said grounds were now reiterated to the court. And in addition thereto that the said count fails to charge a public offense in that it purports to allege that on January 28, 1939 in the sale of E. Barrie Smith of securities the defendants jointly placed in the mail a check for \$195 on a Hartford, Connecticut bank,

that is, the Hartford National Bank and Trust Company, and facsimile or photostatic copy of said check is made a part of the said allegations. And I submit that there is no evidence in the case that the defendant Danziger authorized or participated and placed said check in the [1292] mails.

And, for that matter, I submit, again, that there is no evidence that any of these defendants placed said check in the mail. If it was placed in the mails at all, if we may assume that by surmise, conjecture and speculation, it was an act on the part of the Bank of America here in Los Angeles; and for all we know they may have used roller skates, as far as the record evidence goes, in transmitting that check to the Hartford National Bank and Trust Company.

The Court: Decision is reserved.

Mr. Rose: I now submit to your Honor a motion in respect to said count in behalf of defendant Trinidad International Petroleum Company, and with the court's permission I incorporate by reference all of the matters and the grounds heretofore submitted in respect to count 1 and the similar allegation in regard to the transmittal of check No. 5—that is count No. 5, with the same force and effect as if each of these matters were reiterated to the court in support of said motion.

The Court: Decision is reserved.

Mr. Rose: Just for the purpose of the record, your Honor, I am assuming from your Honor's judicial acts in regard to the several motions, that

your Honor is accepting and permitting me to refer by reference?

The Court: That is correct.

Mr. Rose: That is understood? [1293]

The Court: It is understood.

Mr. Rose: Because we have one judge on the Circuit Court, in one case that indicated that all the grounds must be reiterated, and I don't want to bore the court by going through that again.

The motion now has been made in behalf of Trinidad; is that correct, your Honor?

The Court: That's right.

Mr. Rose: I now present the same motion, namely, to quash, annul and dismiss as to the defendant Wake Development Company, and incorporate by reference the reasons and grounds as stated in support of said motion as heretofore submitted in behalf of the other defendants.

The Court: Decision is reserved.

Mr. Rose: Now, as to count 7—

Mr. Lucas: At this point, if your Honor please, the government will stipulate that count 7 be dismissed as to all defendants.

The Court: Why?

Mr. Lucas: On the ground we have not offered sufficient proof to support that. And that is the only one.

The Court: I am going to let Mr. Rose complete his record, nevertheless. What you might say about count 7 might have some application to the whole situation, counts 1 to 7.

Mr. Rose: I now submit to your Honor in be-

half of the [1294] defendant J. M. Danziger, individually, a motion to dismiss count 7, to quash and annul it, upon each and all of the grounds pertaining to that charge of the indictment adopted by reference and made a part of these allegations; upon the additional ground that there is no evidence to show that the defendant Danziger participated in, authorized or had any part in the transaction therein charged. On the further ground that the deposit of this check with the Bank of America as reflected by the evidence does not constitute a violation of the offense sought to be charged and specifically averred in this indictment. We have here, again, the situation that it is the contention of the defendants jointly, severally, and separately that if this check was deposited in the mail as alleged in said count it was the act of the Bank of America and not at the solicitation or request of any of the defendants, and so far as the evidence goes it may have been delivered by hand or foot or bicycle, I don't know what. In any event, not through any of the mediums, and it is not a device such as is set forth in the substantive offenses sought to be set up in this indictment.

The Court: Decision is reserved.

Mr. Rose: I submit the same motion, namely, to quash, annul and dismiss as to the defendant Trinidad International Petroleum, and incorporate by reference the grounds and each of them heretofore addressed in respect to the other counts so far as they may pertain to any of the allegations, [1295] the scheme, so-called device as alleged in said in-

dietment antecedent to and as a part of count 7.

The Court: Decision is reserved.

Mr. Rose: I now make a motion—who have we got now, Trinidad?

The Court: You are up to Wake now.

Mr. Rose: I haven't made it in behalf of Wake, have I?

The Court: You covered Trinidad.

Mr. Rose: I submit a motion to quash, annul and dismiss count 7 by reason of and adopt by reference all of the grounds and reasons addressed to the court in the prior motions in so far as they pertain and relate to the acts of omission and commission purported to be set forth in the preceding counts and each of them and made a part of count No. 7.

The Court: Decision is reserved.

Mr. Lucas, you give us the government's legal theory as to counts 1 to 7, which are the Securities Act counts.

Mr. Lucas: May it please the court and counsel, with respect to count 1 it is alleged that the mailing, use of the mails in violation of the statute and in execution of the scheme and in procuring the sale to Mrs. Parsons, that the mail was used in the letter as set up, the letter of May 15, 1940, which says, "Enclosed herewith you will find certificates of Trinidad International Petroleum, Ltd. in your name," and sets them out. Attached to that letter [1296] is the air mail envelope, return receipt requested stamped on the outside, together with a number. On the letter itself it bears the legend

that it was air mail registered and a return receipt was requested.

The Court: Where did that come from in the case?

Mr. Lucas: That came into the record and is in evidence and was identified, if I remember, by the witness Mainland, who said he procured it from Mrs. Parsons, the person to whom it was addressed, in the course of his investigation, as a representative of the Securities and Exchange Commission.

It is further referred to in some of the testimony of Mr. Danziger in his sworn testimony.

Now, as to that, your Honor, I hope counsel hasn't confused the court by his statement of the government's position. And may I, with the indulgence of the court, just briefly outline the legal aspect of this?

The law says that whosoever shall devise a scheme to defraud and make use of the mails or of the instrumentalities of Congress in effecting a sale of a security shall be guilty.

Now, all we have to do is to prove the scheme to defraud.

The Court: What statute are you talking about?

Mr. Lucas: I am talking now about the Securities Act itself. [1297]

The Court: It isn't phrased that way.

Mr. Lucas: Sir?

The Court: It isn't phrased that way.

Mr. Lucas: I didn't purport to quote it verbatim, your Honor.

The Court: No.

Mr. Lucas: Let me get it in front of me and speak authoritatively, at least, by reading the law.

The Court: That would have been a good statement of the mail fraud statute, the one you just made.

Mr. Lucas: Let's take 77q itself, your Honor.

The Court: I don't say that we don't arrive at the same result. I am still looking for light. The fact is that the draftsmanship of the mail fraud statute and the draftsmanship of the Securities Act are different in form.

Mr. Lucas: They are substantially the same, only as the word "sale" is used.

When I answered your Honor this morning, I think I was——

The Court: Let's read now the Securities Act. It isn't long.

Mr. Lucas: "It shall be unlawful for any person in the sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails"——

The Court: All right. All we need for the purpose of [1298] this case is it shall be unlawful for any person in the sale of any securities by the use of the mails—to do what?

Mr. Lucas: "to employ any device, scheme or artifice to defraud."

Now, I am going to redwell on the artifice, scheme and device to defraud. I think it has been so thoroughly covered here.

The Court: That is your opening allegation,

that is what you have been talking about for two or three days?

Mr. Lucas: Yes. Now, having proven the scheme to defraud, what else must the government prove? We must prove the use of the mail.

We have in evidence the very mailed document, the piece of mail; we have it here; it is in evidence; it cannot be questioned.

Now, then, to connect it with the sale, I take it that it is part of the government's duty to show that the mail was used in furtherance of the scheme in effecting the sale.

The Court: You see, don't you, the difference in the approach by the draftsman of the mail fraud statute and the draftsman of this act? The draftsman of the mail fraud statute started out talking about a scheme, it would be unlawful for anybody to devise a scheme to defraud anybody, and then to use the mails to do it. That is the approach [1299] of the mail fraud statute.

This statute approaches it from the opposite direction. It says: It shall be unlawful for anybody in the sale of any securities by the use of the mails to employ a fraudulent scheme in doing it.

Mr. Lucas: All right. Now we have proved, then, the scheme.

The Court: I am interested to know whether or not the draftsman of this indictment, whether he followed conventional form of indictments under the Securities Act in drawing this indictment? You may not know about that.

Mr. Lucas: I wouldn't know.

The Court: I should think that the draftsman of this indictment would have made the same approach to the Securities counts as the statute does; that instead of starting out with the allegation about the scheme, device, artifice in great detail, that he would have said that: Prior to the dates herein mentioned within the statute these defendants used the mail to sell securities and employed a fraudulent scheme in so doing, to-wit: —then set out what the fraudulent scheme was.

Mr. Lucas: I see what your Honor is getting at. It is the mechanical draftsmanship of the indictment.

However——

The Court: What he did was he followed the standard and conventional form and approach of mail fraud indictments, [1300] because that is the way the mail fraud statute does approach the subject, and he set out all of the scheme, and then he said he employed the mails to accomplish it.

That may be part of Mr. Rose's difficulty, and it may create some difficulties for me. I am not saying that at this moment.

Mr. Lucas: I think if he has alleged a public offense under this statute, whether he got the cart before the horse or the horse in the proper position, if he got the horse and the cart connected, under the law we have alleged the public offense. It makes little difference, as I see it, your Honor, whether he had started out as your Honor indi-

cated the draftsmanship of the act is, or using the manner which he did, if——

The Court: Mr. Rose has been arguing for some time today that that letter back there, the one with the named purchasers, was not fraudulent itself in any respect; it was just a transmittal of a certificate of stock which he had previously been induced to purchase. So, looking at this statute, which says, “It shall be unlawful for any person in the sale of any securities by the use of the mails ——” —see?

Mr. Lucas: That’s right.

The Court: “——to employ any device, scheme or artifice to defraud.”

He said this was not any device to defraud, this [1301] letter of merely sending her a share of stock.

He didn’t say it, but his argument logically leads to this: If the letter had been a come-on letter, contained some misrepresentations itself, see what I mean? that that would have been employing a device to defraud.

Mr. Lucas: I see what your Honor means, but I do not think that the statutes, I mean that the courts, either the trial courts or the circuit, have put that construction on it.

The Court: I suppose not from what you have said. I am going to look at the decisions this evening.

Mr. Lucas: I am quite satisfied that the courts have construed——

The Court: The same as the mail fraud statute?

Mr. Lucas: The same as the mail fraud, if the instrumentalities of commerce are used in effecting or bringing about——

The Court: Why not use the words of the mail fraud statute to execute the fraud?

Mr. Lucas: To effectuate or——

The Court: This statute does not use the word “execute” or to effectuate the fraud. It says: It shall be unlawful in the sale of any securities by the use of the mails to employ any device to defraud.

So, to make this statute fit your facts here you have to say that these people got up a scheme, fraudulent scheme, [1302] and then they sold securities by mail and they employed that scheme previously gotten up to defraud these people.

Mr. Lucas: Quite right; and used the instrumentalities or used the mail, in this case, to effect the sale. Therefore, when we come to a construction of the mail fraud, we find that the courts have said if the mails are used after the scheme is perfected but not in furtherance of the scheme, but after it is complete, that the offense is not committed. Therefore, I take it——

The Court: In other words, you think the emphasis on the Securities Act is on the use of the mails——

Mr. Lucas: On the sale.

The Court: ——distinguished from the mail fraud statute where it emphasizes the use of the mails in executing the fraud?

Mr. Lucas: That’s right, that is my approach to it, your Honor.

Now, then, in that light, I say to your Honor that when we bring into evidence this letter addressed to Mrs. Parsons in which it says, "Enclosed herewith you will find certificates of Trinidad International Petroleum in your name as follows: * * * Kindly sign the receipt," and so forth, that it is directly within the prohibited provisions or prohibited part of the law, and they are using the mail there directly to effect the sale.

The Court: Making a delivery? [1303]

Mr. Lucas: Making a delivery.

The Court: Mr. Rose challenged you on two things. One was something about the Canada mining stocks. You are the one that was challenged; you ought to remember it better than I do.

Mr. Lucas: Mr. Rose challenged me on so many things.

Mr. Rose: I stated Mr. Carter's testimony was in response to a direct question of yours whether he ever discussed the subject with Danziger of Canadian mining stock, and he said he is quite sure he never did. That is his testimony. [1304]

Mr. Lucas: Without being facetious at all, Mr. Rose, in response to the query of the court, whether the testimony is as Mr. Rose remembers it or whether it is not makes little difference, if the government has proven the scheme and device to defraud and has achieved that by all the testimony that is in the record, I am not going to quarrel about some isolated piece or portion thereof. I do not subscribe to any proposition that we are limited to the concoction of the scheme between De

Hart for the Geat Eastern and Danziger for himself and Wake and Trinidad in that hotel room in New York.

The Court: What was your other challenge, Mr. Rose? Don't tell me you have forgotten it, because I have.

Mr. Rose: I said he charges in some of these counts that these checks were deposited in the mails by the defendant. There isn't a scintilla——

The Court: Yes. What I want to know is how did they get in the case? I have notes, but——

Mr. Rose: They got in the case, your Honor, in this manner: Mr. Mainland produced these checks, and ostensibly he picked them up in the course of his investigation from the banks upon whom the money is drawn, and counsel then proceeded to do this. introduce through the Bank of America clerk—those are the first group of exhibits, your Honor, starting with No. 2, he brought in the clerk of the Bank of America and asked him whether his records reflect, [1305] for example, here that a check in the sum of a thousand dollars, which is Exhibit No. 1, was presented to the Bank of Manhattan Company in New York and whether they collected the proceeds of it, and he said his records so reflect. I pointed out that there is no proof that any of these defendants ever deposited that check in the mail; assuming that they did do it, I said it wouldn't make any difference, it doesn't violate this Act. Where is his proof that any of these defendants deposited these checks in

the mail? I said for all we know they have thrown them with a rocket or something.

Mr. Lucas: Now, to answer the court's question about how these checks got in the mail. The man from the Bank, Mr. Ladd, I believe, came up and testified that as to each and all and every of these checks, with a possible exception of one, and that is only clouded with some doubt, and it is not a count check at that, they were deposited for collection by Wake Development Company, and transmitted by that bank——

The Court: How did he know that?

Mr. Lucas: From his records that he had in front of him.

The Court: Did you give him these checks?

Mr. Lucas: Yes, they were handed right to him.

The Court: He identified them by some comparable records? [1306]

Mr. Lucas: That's right.

The Court: He would have no recollection of the particular check?

Mr. Lucas: No. He testified from his collection record. In each case, your Honor, there is a collection record.

I show you, for instance, Exhibit No. 9, I don't know whether that is a count or not, but——

The Court: Just tell me what is in it.

Mr. Lucas: A bank collection record is attached which says: "Permanent record," the name of the bank on which the check is drawn, from whom it is sent, the time and date of its sending——

The Court: The data is the same as on these

checks showing the date, the amount, and the bank on which drawn?

Mr. Lucas: Yes.

The Court: And in whose account deposited?

Mr. Lucas: Yes. The amount of it and the special requirement of "Please wire" or "Advise payment" and so on. That is on each of them.

The Court: All right.

Mr. Lucas: That witness testified that his records showed that they were sent to their correspondent bank in New York, and there cashed and cleared, and in each instance the check was paid and credit was given to the account. [1307]

On that I am very happy to answer both the court and counsel as to what the Supreme Court said about what would be the inference to be drawn from that sort of a transaction.

In the case of K-a-n-n vs. United States——

Mr. Rose: Is that C-o-n-n?

Mr. Lucas: No; K-a-n-n, vs. United States of America, decided December 4, 1944, being an appeal for certiorari from the Fourth Circuit, I don't know whether your Honor is familiar with this case or not, but it had this business of the passing of checks. It said this:

"With respect to the second contention, while there may be some question as to whether the defendants may be said to have caused the mailing of the checks, we think it a fair inference that those defendants who drew or those who cashed the checks believed that the bank which took them would mail them to the banks on which they were

drawn, and assuming the petitioner participated in the scheme to defraud," and so forth, "their knowledge was his knowledge."

That very succinctly and clearly takes care of all these mailings.

The Court: Do you have any other outstanding authority that you want me to look at on this general subject during the intermission?

Mr. Lucas: Yes. I would like to review for the court [1308] briefly here, some of the questions that may be——

The Court: Before we leave the Tether account, how was your case lame as to that?

Mr. Lucas: The seventh count, if the court please, Mr. Tether, who was named in that count, was dead, and we couldn't get ahold of him, and we couldn't produce here any of the original mailings. So, while I believe there is some meager evidence obtained from Mr. Danziger, carbon copies and what not in his files, that he gave to Mr. Mainland——

The Court: Now, Parsons, Lawyer, Pitts, Russell, Skinner, E. Barrie Smith, did your witness——

Mr. Lucas: Carter testified as to having talked with every one of them.

The Court: With all of them?

Mr. Lucas: Yes, indeed. So the only count on which the government concedes that it has not offered evidence of a convincing character is count seven.

Counsel in his argument said something about the mailing or causing to be mailed of these things.

I take it that it being in evidence it is too late to make that objection, but were it legally possible to make that objection at this time, I say that in the case of *Clark vs. United States* in 134 Fed. (2d) 538, they held as follows under this Section 338:

“The offense committed—— [1309]

Mr. Rose: 338 has no application to counts one to seven.

Mr. Lucas: Please don't interrupt me, counsel.

Mr. Rose: I would like to follow you. I take it you are not secretly addressing the court, but you intend to convey some position maintained by you in support of your case here, and I think I ought to know what you are talking about.

Mr. Lucas: I think you follow me, counsel, but at a great distance.

Mr. Rose: You are very difficult to follow.

Mr. Lucas: Under this Section, 338, they are speaking of—that is the mail fraud:

“The offense is committed when the mails are used for the purpose of executing such scheme or attempting to do so, and it is unnecessary that the defendant himself mail letters if he brought about the mailing.”

The Court: What I am interested in is whether you have some decision there which generally construes the Securities Act.

Mr. Lucas: Yes, there are some excerpts to be found, if the court please, in the annotations in Title 15. I particularly call the court's attention to that reference, the *Coplin* case, which is found

on page 464 of that volume you have in front of you, which is one of the leading cases [1310] in the Ninth Circuit on what is necessary to be proved. Of course, there they were using the telephone. And on 465, under the sufficiency to show violation, I would call your attention there to the citation of Landay vs. United States, evidence showing promoters and so forth. And the one immediately below that, the case of Kobald——

Mr. Rose: Is that the decision by Judge Stephens? Which one are you quoting from?

Mr. Lucas: I don't know. No, this one I last quoted was——

Mr. Rose: I mean the one that you say——

Mr. Lucas: The Coplin case?

Mr. Rose: Yes. Is that the decision by Judge Stephens?

Mr. Lucas: I don't know, Mr. Rose. It arose in Seattle.

Those two cases there on page 465 are very worthy of note, if the court please.

The Court: What two on 465? Landay and what else?

Mr. Lucas: Landay and the one immediately above that, Kobald-Quinn and Company vs. United States, down in Georgia. And the one immediately below that—well, that is another citation of the Kobald decision.

Going over to the question of the charging portion of this indictment, I would direct your Honor's attention to page 462 in the next to the last paragraph in the left-hand column there, the case

of Bogy, a very celebrated case, [1311] construing the Securities Act, having to do with the sale and the definition of a sale.

Then on page 460, subdivision 10 under the head of "Use of mails," that case there Securities and Exchange Commission vs. Time Trust Incorporated, that is a District Court of California case found in 28 Sup., I am not familiar with it.

With regard to the mailing and as to whether or not the mailing after the transaction is complete is within the meaning of the Section, I refer your Honor to the District Court of the Northern District of Georgia.

The Court: What do you mean after the transaction is complete?

Mr. Lucas: In this one case, for instance, they have said here—they raised the question of whether or not it is in furtherance of it. If that particular part, if that phase of it is applicable to this Securities Act, I say that we have met in each instance here—if your Honor will examine it, the particular mail matter, you will see that we have exercised great care to select those pieces of mail matter which on their face shows that the transaction is not complete and therefore it is in furtherance of the scheme, or in furtherance of the sale, not after it is completed. This Georgia case even goes so far as to say that the mailing of a confirmation——

The Court: What are the next group of counts?

Mr. Lucas: Now, your Honor, the next four——

The Court: Are registration counts?

Mr. Lucas: Are registration counts.

The Court: You be prepared to move as to them when I come back in 10 minutes, Mr. Rose.

(A short recess was taken.)

Mr. Rose: With your Honor's permission, there has been some reference made to some cases here, in the case of *Holmes vs. United States*, 134 Federal Reporter, 2nd Series, 125, reading from the syllabus one to six, on page 129—incidentally, this is 15 U.S.C., 77 q (a) (1), which is the count we are talking about here, under discussion of requisites of proof, it says, quoting from *Hammer vs. United States*, 271 U.S. 620:

"In each count of the indictment the falsity of the scheme is charged. This necessitated proof of the fraudulent character of the scheme and the falsity of the representations, and a denial of the bona fide character of the scheme." Citing a Circuit Court case.

In other words, I mention that so opposing counsel will have in mind the elements that he apparently fails to recognize as incumbent upon him to offer proof to and as I pointed out in this *United States vs. Monjar* case, the mailing in each particular instance must be set forth and pleaded, that said mailing constituted and was [1313] intended as a fraudulent act, and so forth.

We are up to count eight, are we? No, we are up to count nine.

The Clerk: Eight.

Mr. Lucas: Eight.

Mr. Rose: At this time, your Honor, on behalf of the defendant Danziger, individually, I move to quash and dismiss count eight upon the following grounds, severally, that said count purports to charge that on January 26, 1939, the defendants place in the mails in this district here to be delivered to Michael Burns a letter of transmittal, including a stock and note certificate, in order to deliver the same after a sale, referring to said stock; and the purported offense designated in said count purports to be an infraction of the law, it is specifically set forth here as Section 5 (a) Subdivision (2) of the Securities Act of 1933, and the same nomenclature will be found in the Statute 15 U.S.C. Section 77e Subdivision (a) in Part 20 thereof.

Now, in that connection, Section 5 (a) Subdivision (2) relates and pertains to a prohibition relating to interstate commerce in the mails, and reads as follows:

“Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—” And Subdivision (2) is: [1314] “to carry or to cause to be carried through the mails or interstate commerce any such security for the purpose of sale or for delivery after sale * * *”

In conjunction with said section, your Honor, there must be, necessarily, considered Section 3 (a) of the Act, and its subdivisions, which is an exempted proviso in respect to such acts as are set

forth in this Securities Act, unless otherwise specified.

Now, for example, in 17 (a) Section (3), as your Honor will remember, it expressly says that the provisos of Section 3 do not apply to the matters that are proscribed by said Act. In other words, it doesn't make any difference. You discussed here a moment ago, your Honor, with opposing counsel, what are the elements of the offense under that Section 17, Subdivision (1)? It doesn't make any difference if that plan and those acts are committed whether you are registered or not registered, and it expressly throws out Section 3 to which I am going to allude in a moment.

Now, Section 3 of this Act, Subdivision (a) reads as follows:

“Except as hereinafter expressly provided, the provisions of this Title shall not apply to any of the following classes of securities.” And then the part that is applicable here is Subdivision (1):

“Any security which, prior to or within sixty days after the enactment of this Title, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to said sixty days;”

In this connection, the undisputed evidence and proofs are that the securities here involved, and which were assertedly sold to Burns, was the privately owned security of the Wake Development Company, that these stocks had been regularly is-

sued as set forth in Section 3, that it was prior to and within 60 days after the enactment of this Title it had been sold or disposed of, that is what happened here, by the issuer. In other words, the Trinidad Company was the issuer, and had issued long prior—as a matter of fact, you have got an additional point that I am making here, your *ex post facto* element to consider—there is no contention that can be supported by any proof in this record that—this particular stock that is involved in count eight had been regularly issued and transferred prior to the enactment of this section, and expressly comes within the exemption features of this Act. In other words, there can be no violation in this transaction. In other words, Wake having lawfully come into possession of the block of shares, as shown by the evidence here, could [1316] without regard to the Securities Act send a part of that or all of it in the mails to Burns, Jones, or anybody else in the universe, and it doesn't constitute a public offense.

Your Honor has in mind, tied into this count eight, none of these preamble accounts of scheme, device, and all that business. That is a separate and distinct count without realleging or adopting by reference anything. And it says that Jacob Morris Danziger, also known as so and so, Warren Carter, also known as—I am not going to take the time to read that, Trinidad International, and Wake Development Company, and somebody else here, a man named Wright, about whom we know nothing up to this point, anyhow, defendants, did

on the 26th of January, 1939, in this district unlawfully, and feloniously cause to be carried through the United States mails certain securities; then they describe the particular two certificates, facsimiles of which, or, more accurately, photostatic copies of which are affixed, and set forth as a part of the allegations of this count; and it is contended, as I pointed out, that the transmittal through the mails to Burns in Peekskill, New York, was a violation of this section.

Now, I state, first, that it is requisite for your Honor to entertain and consider the applicability of the fact of the exemptions specified in Section 3 (a) of the Act and Subdivision (1), in particularity, and consider the evidence as to the legal status of the securities [1317] involved, namely, that the securities which are here asserted to have been transmitted are by the records shown to have been the personally owned securities of Wake Development Company. There has been no evidence submitted to this court which contends that that is not a fact. The evidence they put on is the testimony, even our friend Mr. Warren here says that in his first discussion with Mr. Danziger, Mr. Danziger said that the particular stock which ultimately found its way into that escrow with that trust company in Delaware was the personally owned stock of Wake Development Company, had been issued prior to the enactment of the Securities Act, and that it did not come under the provisions of the Securities Act at all, and that it was exempted under the Act. Now, this transaction is no dif-

ferent than if I took a certificate of stock in the Edison Company, which stands of record in my name, and I could mail it to anybody, including the sons of Jehovah, anywhere in the universe, and it couldn't constitute a public offense.

Now, the Edison Company stock would not be any different than the Trinidad Company, regardless of what opposing counsel thinks about the characteristics of that company. Here it is sought to charge that the placing of that in the mail, feloniously, incidentally—I don't know why that was put in there, the Act doesn't say anything about felonious or otherwise; the Act says in [1318] Section 5, Subdivision (2), as I pointed out:

“unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly—(2) to carry or cause to be carried through the mails * * *”

The Court: Is it a misdemeanor?

Mr. Rose: I don't remember.

The Court: Mr. Lucas, do you know the penalties?

Mr. Lucas: The penalties are the same for any violation of the Act, your Honor.

Mr. Rose: Frankly, your Honor, I wasn't for my consideration of this case very much concerned about the penalties, and I say to your Honor in all frankness that I never took the trouble to look into that phase of this case. I assume if counsel makes the statement that may be the case. I don't know anything about the penalty provisos of this section.

On the additional ground, your Honor, there is

no evidence to show that these two securities were in fact placed or caused to be placed in the mails by Mr. Danziger. The exhibit and the charging part of the acts and what they are are augmented in this count by attachment of an envelope addressed to Michael Burns with a postmark on the stationery of the Wake Development Company, bearing the signature of the secretary thereof. That is all the [1319] evidence we have.

Therefore, on each and all of the grounds submitted, I move that the motion to quash, dismiss and annul said count, be granted as to the defendant Danziger.

The Court: Decision is reserved.

Mr. Rose: In behalf of the defendant Trinidad International Petroleum Company I move to quash said count, annul and dismiss same as to the defendant Trinidad International Petroleum Company, upon all of the ground heretofore submitted in support of the motion in behalf of the defendant Danziger, which grounds I hereby adopt with your Honor's permission by reference as if they were restated and reiterated to the court on said motion.

The Court: Decision is reserved.

Mr. Rose: As to the defendant Wake Development Company I move that the said count eight be quashed, annulled, and dismissed on each of the grounds set forth in behalf of the defendant J. M. Danziger, and adopt the said grounds by reference; and the further ground that the transmittal of the securities referred to in said letter are expressly exempted under the statutes, Section 3 (a), Sub-

division (1) of the Act, and that there is no evidence to support that in this transaction there was a violation of the statute or statutes, rather, referred to in said count.

The Court: Decision is reserved.

Mr. Rose: At this time, your Honor, I address to the [1320] court a motion in behalf of the defendant J. M. Danziger, individually, to quash, annul and dismiss count nine of the indictment upon the following grounds, severally: That in said count it is sought to charge all of the defendants therein named with having assertedly committed a violation of Section 5 (a), Subdivision (2) of the Securities Act, 15 U.S.C., Section 77e (a) (2); that said count purports to assert the commission of a public offense, namely, the violation of the sections outlined by reason of the defendants having assertedly on the 18th day of May, 1939, in this district feloniously caused to be carried in the mails Trinidad International Petroleum securities for the purpose of sale and delivery to Florence Lawyer, no registration statement being in effect as to such securities.

Will your Honor look at this indictment, or will it be sufficient if I just mention it?

The Court: Yes.

Mr. Rose: I want to call particular attention to the fact that on line 20, page 26 of said indictment the draftsman has sought to use this particular and specific language, and I made a mental note of it at the time, he says, "no registration statement being in effect as to such securities." I am quite

certain it is apparent to your Honor what I have in mind. We won't waste much time in my giving some expression to the thought I have in mind. Since an allegation of this kind, as we see by the authorities, must be pleaded with particularity, and it must be construed in the language employed, we have in addition to the observations that I have already made about it, the allegation without any alternative that there was no registration statement in effect as to such securities.

It doesn't say as to said securities, the securities sent to Florence Lawyer in Yonkers, New York, but the antecedent to which reference is had by force of the language selected here must logically be interpreted that they were alleging that there was no registration as to Trinidad International Petroleum stock. They don't say that these particular shares that were transmitted weren't registered.

Then we come squarely into the state of the record, independent of all other matters that I have presented, that Exhibit A in evidence here shows that the Trinidad International Petroleum, Ltd., stock was registered with the Securities and Exchange Commission, and that the prospectus was authorized as to such stock, and there is no dispute in this case whatsoever that the Trinidad International Petroleum Company, one of the defendants who they claim committed this violation, contrary to this allegation, did have a registration in effect as to such securities, namely, as to the antecedent of that. They don't say to this particular certificate, they don't even take the trouble to even

describe the certificate; they merely talk [1322] of the number of shares.

It shows you when they drew this omnibus indictment there they literally resorted to the process of throwing the book, particularly at Mr. Danziger, and they didn't seem to think that it was incumbent upon them to charge any particular acts.

You can see the way this case has been presented to your Honor here and the constant repetition by opposing counsel of this scheme and plan, all this business and all the sins of Warren and Carter coming down on our heads.

I state to your Honor in support of my motion in connection with this particular count that, firstly, the allegation is completely lacking in supporting evidence, in fact, they themselves, according to the evidence here have shown that a registration statement was in effect concerning the securities.

Mind you, your Honor, I don't want you to think that I am resorting to a little sharp practice here, or something; I want your Honor to clearly know that I am submitting it on that ground, not contending that the securities sold were in fact the securities mentioned in Exhibit A. I want your Honor to have that clearly in mind. I am not pretending to try to submit to your Honor that I am arguing that the shares transmitted, if such is established by the evidence, to Mrs. Lawyer, as alleged in this count, were in fact the securities authorized by [1323] Exhibit A. On the contrary, I want it clearly understood by your Honor that my position as to the factual background here is

that the securities referred to in count nine are the securities that were personally owned by the Wake Development Company as a part of their shares of stock in the Trinidad Company, and that by reason of Section 3 (a), Subdivision (1) of the Securities Act was exempt from being subject to the charge that this transmittal allegedly violated Section 5 (a), Subdivision (2). I am submitting it in addition to the other grounds upon the ground that it affirmatively appears here that the stock referred to in count nine was, in fact, exempt from that Act; but I urge as additional grounds, I hope I am making myself clear, the fact that the charge is not that these particular shares or that particular certificate—they don't mention it here, they just mention the number, and they speak of the shares. On the further ground that the allegations of count nine—I might correct that, the Exhibit attached to it is this letter of May 18?

Mr. Lucas: You should have a photostat attached right to the count.

Mr. Rose: Are there any stock certificates also in count nine?

Mr. Lucas: Yes, we have provided you a picture of the shares of the stock and the preferential profit-sharing note. [1324]

Mr. Rose: I am not contending that I wasn't provided; these things have slipped off my copy. May I take a glance at this?

Mr. Lucas: Yes.

Mr. Rose: Where am I on the motion?

(The record was read.)

Mr. Rose: —are insufficient and contrary to the established facts of record and of evidence, namely, that such securities were in fact registered, upon the ground that the photostats which are incorporated and constitute a part of the allegation of count nine show on their face that they were not the act of the defendant J. M. Danziger, that is the act or part of said act of transmittal; or is there any evidence that he authorized or, in fact, placed the same or caused the same to be placed in the mail as therein alleged. And upon each and all of the grounds I heretofore indicated for the reasons expressed, I move the court grant the motions in behalf of said defendant.

The Court: Decision is reserved.

Mr. Rose: At this time I submit a motion to quash, dismiss and annul count nine as to the defendant Trinidad International Petroleum for the reasons and upon all the grounds heretofore submitted in support of the motion made in behalf of defendant Danziger as an individual, with the same force and effect as if they were reiterated. [1325]

The Court: Decision is reserved.

Mr. Rose: I at this time make a motion to dismiss all of count nine, the quashing of said count and annulling of same in behalf of the defendant Wake Development Company, a corporation, for all of the reasons heretofore submitted in support of the motion on the part of the defendant J. M. Danziger, individually, and for the further reason that the documentary and oral testimony here established without equivocation or qualification that

the securities inferentially referred to in said count was the privately owned stock of said corporate defendant issued long prior to the enactment of the Securities Act, and clearly within the exemption provisos as established by Section 3 (a), Subdivision (1) of said Securities Act.

The Court: Decision is reserved.

Mr. Rose: At this time I submit to the court a motion on behalf of the defendant J. M. Danziger to quash, dismiss and annul count ten of the indictment herein upon the following grounds, that said count purports to charge that all of the defendants named in the indictment did on the 20th day of February, 1939, feloniously cause to be carried in the U. S. mails certain shares of stock of the Trinidad International Petroleum, and these preferential notes, for the purpose of sale and delivery to Harry F. Pitts; said purported acts were reputed to constitute and charge these defendants with such acts being contrary to the provisos of Section 5 (a), Subdivision (2) of the Securities Act of 1933, and 15 U.S.C. Section 77e, Subdivision (a), Part (2).

In this case we have the similar situation of an allegation that no registration statement being in effect as to such securities as distinguished from the said securities; and I will, with your Honor's permission, adopt all of the grounds and reasons in support of the said motion as to count ten in behalf of the defendant J. M. Danziger as were addressed to the court to an asserted similar transaction in the preceding count nine, as if those mat-

ters were restated, and particularly on the grounds that the evidence here shows that the particular securities, even if we are to assume that they are speaking of certain shares as said securities, that the same, necessarily and by reason of the evidence fails to constitute a public offense in that said securities, if any, that were transmitted as alleged in said count ten were and are expressly exempt by reason of Section 3 (a), Subdivision (1) of the Securities Act, and by reason of the fact that the uncontradicted evidence in this record shows that said securities out of which these alleged certificates were a part were issued long prior to the enactment of this Act, and that such enactment, even were it not as contended by us subject to the exemptions of 3 (a), Subdivision (1), would be ex post facto for that reason null and void; and on the further ground that there is no evidence to show [1327] that the defendant J. M. Danziger authorized, participated in, or in fact was privy to the placing of this particular letter, envelope and its enclosures in the mail as charged in said count ten or at all.

The Court: Decision will be reserved.

Mr. Rose: In behalf of the defendant Trinidad International Petroleum Corporation, I move the quashing, annulling and dismissal of count number ten as to said corporate defendant by reason of and upon all of the grounds submitted in support of the motion in behalf of the defendant, individually, J. M. Danziger, as to said count ten, and adopt each of said grounds and reasons, by reference, as if the

same were reiterated at this time in support of a motion in behalf of said defendant.

The Court: Decision will be reserved.

Mr. Rose: I make the same motion to quash, annul and dismiss said count ten as to defendant Wake Development Company by reason of and upon the grounds addressed to your Honor in behalf of defendant J. M. Danziger's similar motion, as to said count, and adopt similar reasons and grounds stated by reference as if the same were addressed to this court in support of the motion on behalf of this particular corporate defendant.

The Court: Decision will be reserved.

Mr. Rose: I now submit to your Honor a motion on behalf of the defendant J. M. Danziger as to count eleven [1328] of this indictment, and move the said count be quashed, annulled, and dismissed as to said defendant upon the grounds, one, that the allegations of said count eleven fails to allege the commission of a public offense as to said defendant.

In this regard I submit to your Honor that said count alleges that on October 4, 1939, the defendants unlawfully and feloniously caused to be carried through the U. S. mails certain securities of the Trinidad International Petroleum and the profit-sharing notes for the purpose of sale and delivery after sale to Adeline B. Skinner, no registration statement being in effect as to such security. Said count includes as part of its allegations as an alleged violation of Section 5 (a), Subdivision (2) of the Securities Act, 15 U.S.C., Section 77e (a)

(2), being a similar transaction in character as the preceding part; upon the grounds that it is not shown or alleged in said count that said securities were subject to the provisos of Section 5 (a), Subdivision (2), and so forth, and that the evidence here reflects as to the generalization of such securities of Trinidad International Petroleum that, in fact, they had registered, and in other respects that the purported shares of stock transmitted in this particular transaction as set forth in this count were in fact shares of stock that were privately owned by the Wake Development Corporation, they had by them been acquired prior to the enactment of the [1329] Securities Act of 1933, and irrespective of the fact that the Securities Act as to the said securities was ex post facto, that Section 3 (a) of the Act, Subdivision (1), in fact, exempted said securities.

And as to the defendant J. M. Danziger, that said allegations do not constitute a public offense as to him or at all.

I submit the motion on each of the grounds and for the reasons herein stated.

The Court: Decision will be reserved.

Mr. Rose: At this time, your Honor, in behalf of the Trinidad International Petroleum Company I submit the motion to quash, annul and dismiss and set aside said count eleven of this indictment for the reasons and upon the grounds addressed to this court in the motion as to this count in behalf of the defendant J. M. Danziger, and I adopt said grounds and reasons by reference with the same

force and effect as if they were reiterated as to the defendant Trinidad International Petroleum Company.

The Court: Decision will be reserved.

Mr. Rose: I now move that your Honor enter an order of dismissal as to count number eleven, as against the Wake Development Company, for the reasons and upon the grounds heretofore addressed to the court in support of the motion as to this particular count in behalf of the defendant J. M. Danziger, individually, and by reason and [1330] particularly of the fact that the undisputed testimony in regard to Wake Development Company was that it was at all times charged in this indictment handling and dealing with, insofar as that corporate defendant is concerned, with its privately owned securities in the Trinidad International Petroleum Company, and for that reason is expressly exempt under Section 3 (a), Subdivision (1) of the Securities Act.

The Court: Decision will be reserved.

Now, Mr. Lucas, state your position as to the registration counts.

Mr. Lucas: Very quickly, and I think easily stated, your Honor, Defendants' Exhibit A in evidence, has reference to a registration statement of the Treasury stock of the Trinidad International Petroleum. It sets up they wanted to sell one hundred thousand shares of Treasury stock at \$5.00 a share to be paid in cash in currency of the United States or Canada.

Page 9 of that sets up what is going to be done

with the money, how it is going to be handled, the money that will accrue after the payment of the brokerage commissions, I believe, for \$400,000.00 to be used by the company. That is Treasury stock.

What we charge is that the Wake Development Company was selling to the public in Pennsylvania, Ohio, New Jersey, Massachusetts, part of its stock for which there was no registration on file, that they were issuing it, and that [1331] under the law they had to have a registration statement on file before they could sell and issue it. It is very simple. The issue that is referred to there is 100,000 shares of the Treasury stock of the Trinidad at a fixed price. What we charge them with doing is selling an altogether different stock at a different price, under different conditions, and not having any registration on file covering it or concerning it.

Now, Trinidad is involved because Trinidad through its president signed Trinidad stock certificates, through its secretary signed Trinidad stock certificates, aided, abetted and assisted the Wake Development Company and its common president, Mr. Danziger, in putting that deal over. So that part is very simple.

The indictment alleges that the securities were sold in violation of the registration provisions of the Securities Act. Trinidad Corporation did in 1934 file a registration statement with the Securities and Exchange Commission. Under that statement Trinidad proposed to offer 100,000 shares of the Common Treasury stock for \$5.00. That statement became effective and the offering as described

in that statement and the prospectus in connection therewith could have properly and legally been made. That offering by that issuer at that price and of that stock was not made.

Mr. Rose: Are you reading from the indictment? [1332]

Mr. Lucas: No, I am not.

The last sentence of the Securities Act of 1933 specifically provides that:

“A registration statement shall be deemed effective only as to the securities so specified therein as proposed to be offered.”

The violations alleged in the indictment involve sales by Wake Development Company of Common Capital stock and preferential profit-sharing notes which are not mentioned in that registration statement, issued by Trinidad International Petroleum in units of one share and one pound note, at an offering price of \$3.00 in cash plus certain shares of other defunct corporations.

These shares and notes were owned by Wake, and the stock was not Treasury stock of Trinidad.

Furthermore, the proceeds of the sale were intended to be retained and were retained by Wake Development Company, no registration statement was ever filed covering shares and notes sold and delivered by Wake as alleged in the indictment, and it is very quickly and easily said. Trinidad comes into the deal not that they issued them directly, but through their president and secretary participated in it, aided and assisted by the signing of the certificates.

There is one thing I do want to call the court's attention to in connection with this count, with one of [1333] these counts, count eleven. There is not, as the court can see, a photostatic copy of the shares of stock and profit-sharing notes. We were unable to provide them. We have in the evidence the carbon copy of the letter that is attached to the indictment procured from Mr. Danziger in which he says he is sending them. Mr. Carter says he sold them, and Mrs. Skinner was here and says she received them. So, I take it we have met the full measure of proof. I did, however, want to call that differentiating fact to the court's attention.

The Court: What section of the statute do you rely on?

Mr. Lucas: We are relying on Section 77e as it is found in your book there, your Honor, Subsection (2).

The Court: What page?

Mr. Lucas: Page 436.

Mr. Rose: That is the same as 5 (a). You charge them in both forms in your indictment.

Mr. Lucas: It says:

“Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly, to carry or cause to be carried through the mails or interstate commerce by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale.”

The Court: What about the exemptions, Mr. Lucas, that [1334] Mr. Rose mentioned?

Mr. Lucas: It is an elementary principle of law, both in Federal and State, that in pleading an offense or charging criminal offense the indictment does not have to plead the exemptions.

The Court: I know, but what is the fact about the exemptions that he relies on?

Mr. Lucas: The exemption, I gather from following counsel's argument, he says it is exempted because this registration statement here refers to the same stock.

Mr. Rose: No.

Mr. Lucas: I don't follow him.

Mr. Rose: Then I don't think you understand the point at all. Shall I repeat it to him?

The Court: Repeat it to me.

Mr. Rose: My point in referring to Exhibit A, Mr. Lucas, was picking out a particular nomenclature in the charging part of the indictment, instead of referring to said shares it says, "such securities." That was merely an incidental point. If you paid any attention, I particularly indicated to his Honor I didn't want his Honor to get the impression I was quibbling here or trying to raise the contention that the shares actually involved in these counts were the shares that were specified under this registration. My contention is that the uncontradicted evidence, the documents that you introduced in evidence, [1335] expressly points out that this is not Treasury stock. It is the privately owned stock of Wake Development. Carter testified here as your witness in support of your case that at the beginning of this meeting there was a discussion

had that these particular securities that were sought to be sold was the privately owned stock of Wake Development Company, and the shares that they had acquired in a lawful and legal manner as their personally owned stock, and for that reason said shares were exempt under—if you will read the Securities Act—Section 3 (a), Subdivision (1).

The Court: What page is that on my book?

Mr. Rose: Your Honor, I haven't it. I think it is 77q—it is either (c) or (d), your Honor.

Mr. Mainland: (c).

The Court: What page, Mr. Mainland?

Mr. Lucas: That is "securities exempted," page 432.

It is very simple, your Honor, as long as Wake Development Company had these shares of stock, this 165,000 shares and kept them and didn't attempt to make a public offering of them, we do not contend that they had to be registered, any registration statement on file, as long as they had those shares of stock; Wake Development Company had received them three or four or five years beforehand.

The Court: Start again, please.

Mr. Lucas: As long as Wake Development Company kept their shares, of course they didn't have to file a [1336] registration statement; but when it began selling those shares as provided here they couldn't sell them legally without violating the law until they put a registration statement on file. That they never did.

The Court: I have never worked with this stat-

ute particularly, although I do know that the S. E. C. like every other agency, wants to broaden its authority as much as it can. That is one of the problems of modern government.

Mr. Lucas: Quite true.

The Court: And probably includes Federal courts, although they have been held pretty closely within bounds. Within recent months, for instances, I have had the claim presented to me in my own district that a sale of real estate contracts is a security within the meaning of the Securities Act, see? That would be pretty poisonous to you Southern California people, when you get around to capitalizing on your climate, as soon as the war is over. If you found that every time a fellow wanted to make a fast deal up the street here on a piece of property, that it had to be registered with the Securities and Exchange Commission, you couldn't sell a piece of property half a dozen times a day, under those provisions.

So, I am not just going to pass over this question maybe as quickly as justified, just because of my natural caution about claims of all modern governmental agencies to [1337] broaden their jurisdiction.

I haven't worked much with the Securities Act, so that is another reason why I am cautious.

Is it the general claim that every security which is sold—I am not using the word “traded in”—every security which is sold must have been registered by somebody at sometime?

Mr. Lucas: If you are going to adopt an analogy or illustration, such as Mr. Rose used here about

the sale of some privately owned Southern California Gas stock, no, of course not. Here the government is interested in this because we don't have any fraud, scheme or design, or anything, we just have got to have a public offering.

The Court: Where is that in this statute? Where is the reference to public offering in this statute?

Mr. Lucas: These offerings or public sales are provided in here——

The Court: Where is that in this statute? Where is the distinction between a public offering and a private sale in this statute?

Mr. Lucas: The point is this, that is where we get back to this exemption thing; every sale must be registered as it says here, unless you come within the exemption. And if you come within the exemption, you should be able to put your finger on it and say, "I am exempt under this one." The defense comes along now and says they are exempt because [1338] there was a registration covering that.

Mr. Rose: You are missing the point entirely. You are attaching a lot of importance, Mr. Lucas, to a very technical point that I addressed to the court, and you are missing the point that his Honor is talking about here, and upon which I relied principally.

The Court: The distinction is made in the early blue sky act as to what is a public offering and what is not, how extensive an offering had to be to be a public offering, and whether the security was a private holding.

Mr. Rose: With your Honor's permission, I failed to point out to your Honor that Section 4 of this Securities Act states, "the provisions of Section 5"—that is a funny set up; they set it up before they come to Section 5—"The provisions of Sections 5 shall not apply to any of the following transactions: Transactions by any person other than an issuer, underwriter or dealer;"

My point is that there you have their own Act. Wake Company was in this transaction, they were neither an issuer or an underwriter, and they were not a dealer; they were selling their privately owned stock, that is the state of the record, and they can't get around it or behind it. Although I like to apply the broader view that your Honor has indicated, and as counsel is trying to point out, it would be all right if Wake hung onto that stock, but, good heavens, if they ever mail a part of it and put it in the mail to [1339] anybody, why, it is too bad, they have committed a public offense.

Mr. Lucas: Of course to say what the Securities and Exchange Commission would or would not do under a given set of circumstances is hard to prophesy about; but it certainly could not overlook the fact that Wake Development Company was holding 165,000 shares of stock that had been issued to it two or three years prior to the going into effect of the law, we will say, and it was holding it in that issued state. But it became an issuer within the meaning of this law the minute it began selling it, and the law says the sale of every security shall be premised or prefaced by a registration statement unless it comes within the exemptions.

The Court: How are private sales taken care of?

Mr. Lucas: Private sales are taken care of in one sense here. But I want to answer counsel when he says they weren't an issuer.

"The term 'issuer' means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of [1340] the fixed, restricted management, or unit type, the term 'issuer' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued"

and it goes on with a lot of exceptions.

That is found in your volume on page 129.

The Court: I don't know how the reporter did, but you talked too fast for me.

I want to talk about what I am interested in, not what you and Mr. Rose are interested in.

Mr. Lucas: Pardon me, your Honor. I didn't mean to ignore you.

The Court: Where is the exemption that said the sale of private stock is exempted.

Mr. Lucas: You won't find it in this section in the words that your Honor apparently is seeking. You won't find it set up that way.

The Court: Well, suppose I took Mr. Rose's

case, suppose I wanted to sell some Southern California Gas?

Mr. Lucas: You go ahead and sell it.

The Court: Why?

Mr. Lucas: You are permitted to. You are not an issuer, you are not making an offering, you are not making a public proposition, and the stock has been registered when [1341] it was sold to you; or if it was registered long prior to the Act, you go ahead with the private sale.

The Court: Now you are getting around to what I asked you 10 minutes ago. If it is not the Securities and Exchange Commission's position that any security must have been registered by somebody at some time, that is sold?

Mr. Lucas: Let's state it this way:—

Mr. Rose: Ask Mr. Mainland.

Mr. Lucas: If it were issued within 20 or 30 days prior to the going into effect of this Act they didn't have to reissue—

The Court: I am not discussing that question of the fact that these people became the owners of this before the Act came into effect. That is a fact, isn't it?

Mr. Lucas: True.

The Court: That isn't what I am talking about at all. Forget that.

Mr. Lucas: Then I misunderstood you.

The Court: This Act went into effect in '33, didn't it.

Mr. Lucas: Yes.

The Court: Suppose they got this stock in '34

under the circumstances they did, this Wake stock?

Mr. Lucas: Then it would be the position—if the Wake stock was issued, if the Trinidad stock was issued to Wake in '34 in the manner in which it was issued, it would [1342] have to receive the approval of the Securities and Exchange Commission. I am talking now of the 165,000 shares that Wake got.

The Court: That is just what I want to get at. I have heard this discussed in the profession; it is not entirely a new question to me.

Mr. Lucas: Mr. Mainland has pointed out to me the provisions of Section 4 under the caption "Exempted Transactions", and thinks it will answer your Honor's question, which provides as follows:

"The provisions of Section 5 shall not apply to any of the following transactions: Transactions by any person other than an issuer, underwriter or dealer;"

Now then, to check that through we have got to go back into who is an issuer and who is an underwriter and so forth, and we get into a very technical field, and the court is bound by the statutory definition of those persons.

Now, transactions by an issuer not involving a public offering, we have some room for a difference of opinion there, an honest difference of opinion as to whether such a deal whereby Wake got this 165,000 shares wouldn't be in under that. It may be under a proper construction of this section that would be an exemption.

The Court: Let's keep what happens to be the point that I am interested in right now. It is not an unfamiliar [1343] transaction, I am not taking any sides now on what was done here, but it is not an unusual transaction—in fact it is very common, I know of nothing more common in the profession than for a man to acquire some stock at the organization of the company when he turns in something that everybody feels is of some value; that is just as ordinary as riding on a street car to your work nowadays. There is hardly a country lawyer in the United States that hasn't organized a corporation and had some people turn in some stuff and take some stock for it. All right. After they get it, does every Tom, Dick and Harry in the United States, every little fellow of one hundred thirty million people in every one of the 48 States, regardless of the size of the transaction, after he has got that stock, does he have to go to the Securities and Exchange Commission and register it before he can sell it to his neighbors?

Mr. Mainland says no.

Mr. Lucas: I don't think so. But when it is offered in the manner in which it is offered as set forth by the testimony here——

The Court: I just want to get the emphasis placed here. If that is where you are going to put the emphasis, on how he disposes of it, his own private stock after he has it, then I want you to show me in the statute where that distinction is made. I want you to talk to me now as if I were a pretty resentful small town lawyer, one of [1344] the many

millions in this country who think they are being overgoverned by a whole lot, and who has just been told that he had done something wrong when he had made a deal for some very plain simple client in his community in organizing a corporation with a minimum capital stock authorized by the laws of his State, who turned in a little piece of property or a patent, or something like that, and when he told his client he could go out and sell a little piece of it to his neighbor for \$500.00, had just been told that he couldn't do that without getting it registered with the great white father in Washington, and making up all those forms. Now, what I want to know it does the emphasis come on the amount of stock that he wants to resell? Nobody can criticize him for acquiring stock in that way, that is his own business, the laws of his State permit him to do that; I think it could hardly be claimed that the S.E.C. has supervisory authority over that initial transaction, one man converting a little piece of property he has into corporate form for reasons of his own, that is nobody's business if he wants to do it that way. He takes some stock back, then, in exchange, and then when he has it a neighbor says, "Bill, I will give you \$500.00 for a third of your interest in that thing, maybe something will come of it some time," and he says, "All right," and they make the deal. I will be surprised if the S.E.C. claims under this Act that that initial transaction has to be [1345] subject to its supervision in any way whereby he incorporated his little project and took the stock for himself.

Now, then, passing that, is this sale that he made to his friend, is that unlawful unless he got it registered? Or is it when he set out to everybody in town and ran an ad in the paper and said, "I have got this stock and I offer it to whoever will come and take it away"? Is that where the emphasis is?

Mr. Lucas: Well, bearing in mind that we have all had some experience, as you say, with the various governmental agencies and the very human desire, I take it, on the part of every agency, and sometimes the courts, to show a jealous regard for their jurisdiction and to want to uphold their jurisdiction, we know that the Securities and Exchange Commission probably wants to assert and hold the jurisdiction to the extent that it possible can, and within the limits of this Act, and I would say that in my opinion—and I am frank to say to your Honor that I am touching the Securities and Exchange Act for the very first time—I in my very limited reading and study of it here would say that your Honor's proposition or illustration is within the reach of the Securities and Exchange Commission under this Act.

Now, that brings us to whether or not they may want or feel, as a matter of policy, that they want to assert it, their rights under it, or assert their jurisdiction in a [1346] particular case. But if that isn't a private transaction as lined up here, if it isn't a public offering, if it isn't this or if it isn't that, it has to be something else, and I would say that when that man assumed by your Honor by his illustration began to make a public offering of it,

and as we have shown here an indiscriminate offering through representatives throughout the various States, that it is clearly——

The Court: Where does the statute make that distinction, which is the distinction that the State Securities statutes make between public and private offerings?

Mr. Lucas: It is only by reading these exemptions. That is the very difficult part of this whole procedure.

The Court: In other words, you think the approach is this: that every sale of stock—we will use the much abused words “*prima facie*”—that every sale of stock which hasn’t been listed by somebody is *prima facie* within the Act?

Mr. Lucas: Every sale must be registered. I think it starts out with that premise, essentially, that every sale must be registered, every issue must be registered, rather. The statute gets into transactions and issues, if the court please, that is the way the statute runs. We talk about registering of an issue and registering of a transaction, exempted transactions and exempted issues; but, generally speaking, I think we can start with that [1347] premise, that every issue must be registered, then, except if it is exempt, and the defendant or the particular person charged must prove himself to be within the exemption. Then if we come to the transactions, we discuss the transactions and I think generally speaking we can say all transactions must be registered except, and then we have the exemptions.

I think that is the general trend and force of this entire enactment.

The Court: Well, we will have to quit because it is getting so late. We will pick up at 10:00 o'clock in the morning.

(Whereupon, at 4:55 o'clock p.m., January 31, 1945, an adjournment was taken until 10:00 o'clock a.m., Thursday, February 1, 1945.

Los Angeles, California,

Thursday, February 1, 1945, 10:00 a.m.

The Clerk: 15173 United States vs. Danziger.

Mr. Lucas: Ready for the government, your Honor.

Mr. Rose: Ready.

The Court: We will go right away to the mail fraud counts, Mr. Rose. Make your motions as to them.

Mr. Rose: Your Honor has undoubtedly, if I may be permitted to refer your Honor to one case on the subject that was under discussion at the conclusion of the hearing yesterday——

The Court: You just hold that thought; we will come back to it. I want to hold my own schedule this morning and run right through the counts.

Mr. Rose: Very well, your Honor. Your Honor, in respect to count number twelve—we have reached up to twelve, haven't we?

Mr. Lucas: Yes.

Mr. Rose: In this particular count, as I diag-

nose it, the government has sought to advert to the first count by reference excepting the last two paragraphs, and then proceeds to charge as affirmative matter, apparently as an overt act, for the reason that they conclude with the language, "contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America." I take it that that inferentially intends to depart from the former classification of alleged offenses and, possibly—well, your Honor has already interpreted that as being the so-called mail fraud charge. In this connection, then, we have the paradoxical situation——

The Court: That is what you call it too, isn't it, counsel for the government?

Mr. Rose: It is ostensibly——

The Court: Twelve and following are mail fraud counts?

Mr. Lucas: Twelve to sixteen are the mail fraud counts; seventeen is the conspiracy.

Mr. Rose: Your Honor will observe, paradoxically here, they have adopted as a preamble the allegation except the last two paragraphs of the first count, which is specifically defined and classified throughout here and by election of the government as the violation, repeatedly, of the Securities Act, that is, namely, Section 17 (a), Subdivision (1) and its corollary Act as set forth in the U. S. Code. Now, I don't think they could do it to start with. In the first place, they are attributing, they are trying to tie this isolated item—has your Honor the indictment before him? You will probably recall

this in a moment. Your Honor will remember this letter that was addressed to Dr. Hazelton, as was disclosed here from the witness stand by Carmen, and there is some writing "A. L. Roberts, room 721 Longacre Building, New York [1351] City" on the envelope. Your Honor will remember that Warren testified that that was the office of the head of the G.E., Great Eastern Gas setup at that time in 1940. So you have here an irreconcilable and paradoxical situation where they are attempting to claim and assert this conspiracy that occurred, allegedly, in 1935, between Warren or Carter and these other defendants, that this was an outcropping of that so-called conspiracy. That is an absurdity on its face.

I submit, your Honor, that this particular isolated item was undoubtedly a low-down piece of skulduggery on the part of Warren, and undoubtedly is, as your Honor indicated in your general analysis of the character of offense known as use of mails to defraud, in fact, a crime of that character.

In other words, this was a brilliant idea of Carter's, as he confesses here, to bilk Hazelton not by reason of any of the routine of selling him any stock, but he goes into Hazelton there and falsely tells him he needs some money to make a trip out to the coast, then he is going to Trinidad, British West Indies. Now, that is a pure swindle. And then he writes him this letter from Los Angeles. Your Honor can see this was a new piece of mischief and a definitely criminal activity originating, manifest-

ly, in the mind of Carter or Warren. This piece of swindle couldn't possibly be characterized as a [1352] legitimate act exaggerated or otherwise, growing out of the so-called scheme to sell this stock. This was a plain isolated and separate swindle originating in the mind of Warren in 1940.

In what manner are these other defendants reputed to be particeps criminis to this brainstorm and original idea of Carter or Warren? And what relationship has it to the so-called setup that occurred, as counsel has advised you, in 1935 that this conspiracy and combine was entered into? This is a separate and isolated transaction which, according to the confessions of Warren or Carter, undoubtedly subjects him to penalty for having used the mails to defraud. It wasn't a conspiracy; it was definitely an act on his part which clearly comes within the purview of those cases. Now, I want to show you how these—counsel and the geniuses have contrived to place the burden of this particular crime of the Trinidad Company, on the Wake Company and on Danziger. Where is there a scintilla of evidence in this case that shows that these companies and Danziger were privy and participated and agreed to function in this isolated and late piece of swindling on the part of Warren?

The only thing in the record is what? He, Warren, and that is all we have for it, says that he wrote a letter after he had been down to Hazelton and come back and told him this humbug story about he was going to [1353] British West Indies, and he was setting up this little syndicate that he was

going to let him in, and he needs money for the trip. Now, after he had presented this humbug, and in his own mind—mind you, all of the whole crime, your Honor, had been thought up, conceived, carried out in all of its details, and was complete before Warren or Carter caused this particular document to be placed in the mail. You have all of the elements complete beyond a shadow of a doubt and to a point of demonstration. Now, how are they trying to tie Trinidad, Wake, and Danziger into it? Merely by this piece of ephemeral nonsense: Warren says that he wrote a letter out to Danziger telling him that he expected a piece of mail, that he was going under the name of Roberts, and he asked that this be mailed.

Now, I don't know, your Honor, just how far one can go in trying to saddle the crime on somebody else. My point is there isn't a word of evidence that this swindle or proposed swindle—it was complete, your Honor, the money follows out before anything else. You remember that letter he sent to him in which he tells him, "I forgot to give you my address," he had a big blank space in it, then he tells him what the address is in New York. As I say, your Honor, this is going pretty far, when they try to charge as serious a crime as this to these defendants. And, mind you, they attempt to tie this into the conspiracy in 1935. [1354]

Now, in heaven's name on what hypothesis or on what rational basis can opposing counsel with a clear countenance and in good conscience submit to your Honor that this piece of treachery on the

part of Warren or Carter could have possibly been in the mind of anybody at the time of these transactions in New York respecting the proposed sale of the privately owned stock of Wake Development Company?

I say to your Honor this is going pretty far. As I say, the only thing in this evidence is Warren, the perpetrator of the crime, the man who had already committed the crime, he says that he wrote a letter, the contents of that letter is not before us, in which he said he was using the name of Roberts in a transaction with Hazelton. He doesn't even, willing as he is, assay to state to your Honor under oath or otherwise, "I sent a copy of this communication" or "I made the details of this swindle that I perpetrated on Hazelton by the time I sent this letter on to Los Angeles to be mailed." He merely says that he advised in the mail, without producing any copy or anything, that he was going under the name of Roberts in a transaction with Hazelton.

I don't know, your Honor, perhaps it is possible for reasonable men to conceive that a member of the bar for over 40 years standing here in Los Angeles, and a man who has been associated with big enterprises, would lend himself to this form of trickery and treachery. It is [1355] inconceivable and there isn't a scintilla of evidence.

If Warren's statement is to be believed, how far does it go from an evidentiary standpoint? It goes so far as saying, "I advised Danziger that I was carrying out a transaction with Hazelton in Jersey

under the name of Roberts," and that is as far as it goes. And with this evidence in the record—here is a thing that occurred to me, your Honor, and it is amazing. This scoundrel here was a fugitive at that time. Mind you, he wasn't produced before the Grand Jury. Who knew the mechanics of this transaction prior to the time that Warren or Carter appeared on this witness stand and told us what he did? Who knew that Warren or Carter, in fact, hadn't been in Los Angeles and mailed this letter, in fact, before he took the stand? What my mind is thinking about is something that your Honor seemed to give some consideration to, and that is what does it take to bring about an indictment of an individual? Can they, having elected to indict a man or some companies, can they charge him with all and inconceivable crimes on sheer speculation? This, your Honor, isn't even hearsay. Hazelton certainly didn't know that Roberts or Warren or Carter hadn't gone out to California. They didn't know—Warren hadn't given them a confession in 1940, that is obvious. So they just assume, they go to Hazelton, and there isn't any evidence—yes, there is, Hazelton was here and told us that he [1356] received this letter; now, that is all that Hazelton knew. And, mind you, at this stage of the game, namely, in March of 1940, how did the government know that this entrepreneur here hadn't even gone to the British West Indies? How did they know that he hadn't? That is merely assumption. We know now, yes, we heard the story, we know what happened, we know he didn't; but

did they know that he didn't? But, yet, they come out here and they indict a man on this thing here without knowing any facts at all, not even having hearsay; sheer surmise and conjecture.

Now, I say to your Honor, that if I thought that Danziger was idiotic enough with what he has at stake in this community and with his experience to be a party to this type of swindle, I say to your Honor in all candor, I wouldn't be in this court representing him. I would think that he deserves to be removed from society, if he would lend himself to this form of transaction.

This was, your Honor, sheer swindle of a man coming in and saying, "I am making a trip out here. I am going to the British West Indies, I need the money, now how much have you got?" "I have got this." "Let me have your stock."

By the way, he got his stock in connection with this transaction, too, you remember, 100 shares of that television company.

Who got it? Warren got it. He says he has got it [1357] somewhere even now.

Now, I say, your Honor, that I am very curious to see how far a prosecutor will go in claiming that there is evidence in this record to connect, mind you, not only Danziger, they even want to connect Wake Development Company with this humbug, and this bit of treachery, and they even throw in Trinidad International Petroleum Company, and several others that are named in this indictment. I say, your Honor, there is absolutely no basis or foundation from an evidentiary standpoint to sup-

port this particular count on any hypothesis, even on wild suspicion; there is nothing to show that any of the defendants whom I am representing in this proceeding here ever saw this communication, this thing here, were ever in possession or custody of it, that they ever received it; and, moreover, that they knew nothing about this transaction, and they didn't as charged in this count place it in the mail.

The Court: State your formal motion, Mr. Rose, as to the count.

Mr. Rose: At this time, your Honor, on behalf of the defendant J. M. Danziger, individually, I move that count number twelve be quashed, annulled, and dismissed upon the ground that there is no evidence of a competent nature whatsoever in the record of these proceedings to maintain the charge contained in said count twelve as applicable to said defendant, and for the reasons outlined in connection with a discussion of the evidence of this point I move that said motion be granted as to the defendant J. M. Danziger.

The Court: Decision will be reserved.

Mr. Rose: In respect to the defendant Trinidad International Petroleum Company, I move that the said count twelve be annulled, quashed and vacated and dismissed for the same reasons and upon the ground stated, which I adopt by reference, in connection with the motion submitted in behalf of the defendant J. M. Danziger, individually.

The Court: Decision will be reserved.

Mr. Rose: At this time, your Honor, I move that count twelve be quashed, annulled and dis-

missed as to the defendant Wake Development Company on the ground that there is no evidence whatsoever in the record to connect said defendants with the alleged commission of this offense charged in said count, and adopt by reference all of the matters and things submitted in support of the motion as to this count addressed to the court in behalf of the defendant J. M. Danziger, individually.

The Court: Decision will be reserved.

Now, go to count thirteen, Mr. Rose.

After I have his motions before me in all the mail fraud counts, then I will ask you to speak on all of them, Mr. Lucas.

Mr. Rose: As to count thirteen here you have the [1359] paradoxical tie-in—this assertedly is a mail fraud count as distinguished from the others, they tie in the allegations save the two last paragraphs of the S.E.C. count in count one; they charge as a substantive act and as a mail fraud that the defendants on March 7, 1940, placed in the mail to be delivered to Philadelphia National Bank a check made payable to A. L. Roberts for \$300.00 contrary to the form of the statute in such case made and provided. Now, attached and made a part of said allegations is a check, a cashier's check, drawn on the Farmers National Bank of Mullica Hill, New Jersey, and said check——

The Court: Who bought that check?

Mr. Lucas: Hazelton.

Mr. Rose: That is the \$300.00 Hazelton was

sending out to this man who was ready to fly to Trinidad, British West Indies.

The Court: All right.

Mr. Rose: Your Honor will remember as he looks at this particular check the evidence so far in this record fails to identify the endorser of that check. Carter or Warren professes that it is not his signature, that he didn't write it. That is the state of the record.

The opinion of the handwriting expert, on motion, was stricken by your Honor.

So, from a standpoint of evidence in connection with [1360] this particular check, we have what? We have the evidence that Hazelton in New Jersey bought this check, and apparently transmitted it out here. Now, then, after that we find by the endorsement following—that is, the rubber stamp following the unidentified signatory “A. L. Roberts” we find merely the Wake Development Company bank endorsement, which would indicate this check was deposited according to the cancellation stamps here in the Bank of America.

I don't understand, frankly, what the theory is in respect to this count. There isn't a single word of evidence on the part of anyone that this check was as charged in the indictment in said count deposited in the mails by anyone. They claim that we deposited it in the mails. There's anybody's testimony in this record that any such thing ever took place, and I can't conceive what difference does it make the manner in which you cash a check. In other words, whatever offense was consummated

by the relieving of Hazelton of this \$300.00 occurred by procuring the cashier's check.

Now, it seems to me that it would have been possible for Carter or Warren or any person after this endorsement to go in and cash this check. Supposing they dropped it in the bank or came to me and said, "Have you got \$300.00?" and I said, "Yes, I have got it. Here is a cashier's check"; I cash it and give them the \$300.00? How does the alleged placing in the mail of this thing, maybe by the bank—[1361] you may infer that it got back to Jersey in interstate commerce, I am not going to resort to fanciful and ridiculous absurdities, we know that this check got back, that it found its way back in the bank here at Mullica Hill, New Jersey, by some form of transportation. It may have gone there by express, I don't know—I am not speaking of poney express, the banks I understand use the Railway Express for bulk clearances and things of that kind, and no doubt they send them to a clearing center in great bulk for convenience, or they save money, something or other. But where is there any evidence that the defendants in this case in Los Angeles placed this check in the mails? And what difference does it make if they had placed the check in the mails? Does it become a crime when a man in lieu of presenting a check and cashing it—supposing, as I say, and who knows what happened here, except by surmise, suppose somebody in behalf of the Wake Development Company had gone down to the Bank of America here and said, "Here, give us \$300.00," and they would have paid

over \$300.00. Wake Development Company would have had its money, and what would they have had to do with the mailing of this check, and how is this mailing of this check the use of the mails to defraud?

They have charged the substantive offense and a definite affirmative act or course of action. They say, and that's what they charge in this count, that the [1362] defendants Trinidad International, Carter, everybody in this indictment—they don't say, "or either or any of them," no, they all did this, they placed it in the mail of the United States to be delivered to the Philadelphia National Bank of Pennsylvania.

Now, what is this? I just looked at a note here and I was wondering if I am seeing things. This check isn't even to the bank that they are talking about. This is the Farmers National Bank of Mullica Hill, New Jersey. They charge it was placed in the mails here by the defendant in a prepaid envelope addressed to the Philadelphia National Bank, Philadelphia, Pennsylvania.

I submit, your Honor, in addition to these observations, that there is not one syllable of testimony in this case that this check came into the hands of the defendant J. M. Danziger, that he had anything to do with its mailing, and for the reasons set forth in an analysis of this count and upon the ground that there is no evidence to connect the defendant J. M. Danziger with this act charged, and on the further ground that the placing of the check in the mails, cashier's check, would not and cannot con-

stitute a public offense, and that by reason of the fact that this transaction under the record testimony shows it is a result of a series of independent and separate conduct committed on the part of Warren or Carter as he confesses here under the alias "Roberts" a new scheme on his part to [1363] procure money for an alleged trip to British West Indies, and so forth, that this cannot per se, and does not and cannot as a matter of law be relegated to the alleged conspiracy which opposing counsel has stated to your Honor occurred prior to the departure of Mr. Danziger to Europe in 1935; and for all of the reasons set forth I move that this count number thirteen be annulled, quashed, and dismissed as to the defendant Danziger.

The Court: Decision will be reserved.

Mr. Rose: I now submit in behalf of the defendant Trinidad International Petroleum Corporation, a co-defendant, a motion to quash, annul and dismiss said count thirteen upon the grounds that there is no evidence to connect said defendant with the commission of the acts and things therein charged. And in that connection I resubmit to your Honor as if restated to you in *haec verba*, the identical reasons and matters submitted in support of a dismissal of this count as to the defendant J. M. Danziger, and adopt same by reference in behalf of the defendant Trinidad International Petroleum Company.

The Court: Decision is reserved.

Mr. Rose: I now submit a motion to your Honor in respect to count thirteen to quash, annul and dis-

miss said count on behalf of the defendant Wake Development Company, upon the ground that there is no evidence to connect said defendant with the acts therein charged, save and other than [1364] its rubber stamp endorsement, and I adopt on behalf of said corporate defendant's motion to dismiss said count each and all of the matters and reasons and things presented to your Honor on behalf of the defendant J. M. Danziger's motion to dismiss said count by reference.

The Court: Decision is reserved. Now, count fourteen.

Mr. Rose: Let me see what fourteen is. In this count it appears there is a reallegation by reference of the first count, save and except the last two paragraphs, than it is alleged as affirmative acts that the defendants on May 8, 1939, in this district, the Southern District of California, for the purposes of executing a scheme—now, your Honor, they charge here that this particular act, they have departed from their language here, here they charge that this particular act was for the purpose of executing the scheme, antecedently the scheme outlined in the first count, that they placed in the mail in this district a check addressed to the Bank of Manhattan Company in New York. Now, this check bears date May 3, 1939, and is the check of Florence S. Lawyer. Here again, the check is the check of the First National Bank at Yonkers, New York, and not the Bank of the Manhattan Company in New York, and I submit that said allegations are paradoxical, antithetical, and inimical to the

provisos of law in that they are tantamount to double talk, and, necessarily, this particular transaction cannot possibly relate as an act to carry out the scheme [1365] to violate the Securities Act section which is in the haphazard manner pointed out pleaded inferentially as a part of the allegations in this count. There is no evidence whatever to show that the defendant J. M. Danziger had anything whatsoever to do with the transmittal of this check as they allege in here to the Bank of Manhattan Company New York, New York. Hence, for the reasons that the allegations in said count are unintelligible, paradoxical, and on the further grounds that there is no evidence to connect the defendant J. M. Danziger with the commission of the acts therein charged, and same do not constitute a public offense in that it is not such an act as is contemplated within the purview of mail fraud, and for the reason of insufficiency of evidence, and for the grounds and matters submitted in connection with the analysis of this count, I move that said count be quashed, annulled, and dismissed as to the defendant J. M. Danziger, individually.

The Court: Decision is reserved.

Mr. Rose: Now, in behalf of the defendant Trinidad International Petroleum Corporation I move the quashal, dismissal and annulling of count fourteen on the grounds submitted in support of the motion on behalf of the defendant J. M. Danziger, individually, and I adopt said reasons, analysis and the grounds and incorporate them as a part

of my motion that I now present in behalf of said corporate defendant. [1366]

The Court: Decision is reserved.

Mr. Rose: I now move, your Honor, that said count insofar as it is sought to apply same as an offense committed on the part of Wake Development Company be quashed, annulled, and dismissed for the reasons and upon the grounds presented in support of the defendant J. M. Danziger's motion, and I adopt said reasons and grounds by reference as if restated, and move that said motion be granted.

The Court: Decision is reserved. Now, count fifteen.

Mr. Rose: Here we have the same situation, your Honor, as presented in the preceding count—we are up to count fifteen, aren't we?

The Court: Yes.

Mr. Rose: This count, as your Honor will observe here, incorporates by reference the so-called conspiracy set forth in the first count, save the last two paragraphs. It specifically adverts to said particular conspiracy in that it says that having devised that scheme in the first count, for the purpose of executing that scheme the defendants unlawfully and feloniously placed and caused to be placed in the mails in this district in the post office a check to the Philadelphia National Bank at Philadelphia, Pennsylvania.

Here, again, the check is the Miners National Bank at Pottsville, Pa. This is a check by Elizabeth T. Parsons. [1367]

I submit there is no evidence in this record what-

soever to show that the defendants placed this check in the mail to be delivered to the Philadelphia National Bank at Philadelphia, Pennsylvania. The conclusions drawn are mere conjecture, surmise and speculation. There is no competent evidence that such act was, in fact, performed in any manner or degree by the defendant J. M. Danziger, and that the said alleged act would not and does not constitute a violation of the so-called mail fraud, and that the pleading of this count is antithetical and paradoxical to the type of alleged conspiracy as set forth in count one, and said count does not state a cause of action, and for all of the reasons asserted and presented in connection with this count I ask the court that said count be annulled, quashed, and dismissed, as applicable to the defendant J. M. Danziger as an individual.

The Court: Decision is reserved.

Mr. Rose: I now submit in respect to the said count, your Honor, a motion in behalf of the defendant Trinidad International Petroleum Corporation, and I adopt by reference the reasons and things as applicable to said corporate defendant in an analysis of the grounds stated in support of the motion as to said count in behalf of the defendant J. M. Danziger individually.

The Court: Decision is reserved.

Mr. Rose: I now submit to your Honor a motion as to said count in behalf of the defendant Wake Development [1368] Company or Corporation and adopt by reference as if restated all of the grounds and reasons presented in connection with said mo-

tion addressed to this in behalf of defendant J. M. Danziger's motion, as if the same were reiterated and restated.

The Court: Decision is reserved. Count sixteen.

Mr. Rose: Now, count sixteen adverts to the first count in the same manner, but in lieu of a check transaction the acts which are asserted in this count as constituting alleged violation of the mail fraud statute sets out a letter under date of January 26, 1939, addressed to E. Barrie Smith, Hartford, Connecticut. This letter said:

"We acknowledge receipt of your registered air mail letter with enclosures of endorsed Certificate 0779 for three hundred shares of Golden Quebec Mines, Limited, and your check in the amount of \$195.00.

"Confirming the terms of our letter of January 19th, we will have transferred to your name 55-5/7ths shares of Trinidad International preferential profit-sharing notes of like concern, and same will be forwarded to you shortly."

Signed by the secretary "A. Faulkner."

I submit that said count fails to charge a public offense, that the acts and things alleged therein are paradoxical and contrary to any evidence in this record. The transmittal of said letter of itself cannot possibly in the face of the record evidence be an act relating to the alleged scheme established by the evidence here formulated in the year 1935, namely, the first count of conspiracy. That there is no evidence to show that this letter had anything to do with the so-called scheme in the first count.

Furthermore, it affirmatively appears by the document which was asserted to be transmitted through the mails that it was not the act of J. M. Danziger as an individual nor is there any evidence that he was privy to, participated or had anything to do with this transmittal of the letter.

Frankly, in passing, I am in a quandry to know why the venerable draftsman of this indictment didn't pick out every one of these letters, they have introduced hundreds of them, and added a few more hundred counts. I think they were rather gracious just picking this particular letter out.

For the reasons stated there is no evidence to connect the defendant Danziger with the commission of the offense charged or sought to be charged in said count sixteen, and in support of that the matter is submitted in respect to a discussion and consideration of said charge and count, I move the court that said count sixteen be [1370] dismissed, annulled and quashed as to the defendant J. M. Danziger.

The Court: Decision will be reserved.

Mr. Rose: I now submit to your Honor in behalf of the defendant Trinidad International Petroleum Corporation a motion that this count number sixteen be quashed, dismissed and annulled on the ground that there is absolutely no evidence to connect said defendant with the commission of said alleged offense, and that the same does not contemplate by the acts therein charged the crime sought to be charged as against said defendant, that the allegations are paradoxical, inconsistent, and

the offense is so intermingled that it is more than difficult to even grasp the theory on which the prosecution asserts the charge of the commission of an offense in that count as to any defendant.

The Court: Decision will be reserved.

Mr. Rose: I submit a motion on behalf of the defendant Wake Development Company to quash, annul and dismiss that count for the reasons and upon all the grounds submitted to your Honor, which I adopt by reference, in the motions addressed to this court for the dismissal of said count on behalf of the defendant J. M. Danziger and on behalf of the defendant Trinidad International Petroleum Corporation.

The Court: Decision will be reserved. [1371]

Mr. Lucas, I will hear you briefly on the mail fraud counts.

Mr. Lucas: I will be very happy to make it brief, your Honor.

I think a mere reading of count twelve, the letter therein contained, suffices to show that it was mailed as testified by witnesses. In other words, the record shows that this particular letter was sent by Carter to Wake for remailing back to Hazelton. The letter, which is in evidence, Government's Exhibit 34, bears a Los Angeles postmark in two places. The court will remember that the testimony shows both by Hazelton and by Carter——

The Court: Go to the next count.

Mr. Lucas: As to the other, I only want to correct counsel in one thing; the transcript of the evidence shows that the expert testified as follows:

“There is somewhat more variation exemplified in this endorsement, but in my judgment it is not without the range of Danziger’s handwriting.”

The Court: What count are you talking about?

Mr. Lucas: That is thirteen, the check.

The Court: That is the cashier’s check?

Mr. Lucas: Yes. After Mr. Rose made some argument the court said, “The answer may stand”; so there is evidence of the endorsement, although we do not rely on the [1372] endorsement at all, that is, the handwriting endorsement “A. L. Roberts,” because the Wake Development Company stamp is on it.

And I want to say in each and every one of these instances where there is a check involved, the collection record itself shows that it was sent by air mail at the request of the Wake Development Company.

The Court: What record?

Mr. Lucas: The bank records, the collection records introduced by the bank.

The Court: Oh, yes.

Mr. Rose: I think you are in error about that, counsel.

Mr. Lucas: The same thing holds true about count fourteen.

The Court: We will take the morning recess, and I will hear your motion on the last count when I come back, Mr. Rose.

Mr. Rose: Very well, your Honor.

(A short recess was taken.) [1373]

The Court: Count 17.

Mr. Rose: Your Honor, here in Count 17 of the indictment there is a new form of conspiracy charged to have been formulated within the jurisdiction of this Court. It charges the defendants combined, confederated, and agreed to commit divers offenses against the United States.

Your Honor will remember at the incipient stages of this proceeding I commented on the fact that Section 88, that is, 18, USC., Section 88, which is the form of offense asserted to have been committed in this count, is predicated on the theory that it was an offense against the United States. Then, in attempting to describe the offense, the antecedent of that being against the United States, the divers offenses charged against these said defendants in the divers preceding counts of this indictment. Then they begin to specify 17(a)(1) and 5(a)(2). They do that in the conjunctive.

Now, as we remember 17(a)(1) being given some consideration by your Honor yesterday, it is a substantive offense, which I maintain under the scant decisions that are extant and touching upon that particular offense is the use of the mails in the selling of securities, and is, as your Honor indicated it is, a different form of offense than the so-called use of the mails to defraud. It relegates itself to securities.

The conjunctive "and" 5(a)(2), as we remember, is a section which pertains to registration of securities. [1374]

I am not going to take your Honor's time up on that point because we gave that considerable atten-

tion yesterday. It is our contention that the securities herein involved were not subject to registration by reason of Section 3, and under any definement of the so-called exemptions as set forth in Section 4 of the Securities Act.

And they tie in 215 of the Criminal Code, which, as I pointed out, is a very short statute which defines a crime to defraud the United States.

The Court: What is that all about, Mr. Lucas, from the government's point of view?

Mr. Lucas: This conspiracy?

The Court: No. This reference to the—is that 18, 88?

Mr. Rose: Your Honor, it is Title 18, Section 88. It is a very short paragraph as I remember it.

Mr. Lucas: I had hoped that before the conclusion of this case Mr. Rose would read Section 88. He tried to tell this Court that it was limited to perpetration of a fraud upon the United States. A mere reading of the section, your Honor, will show that a conspiracy to commit any other offense——

The Court: I have been troubled all the time; I thought it was that statute of fraud against the United States. Go ahead, Mr. Rose.

Mr. Rose: Are we talking about 18, USC Section 338, [1375] or are we talking about Title 18, Section 88? It is charged here 18, USC Section 338 in the body. Isn't that the section that pertains, your Honor, to a crime against the United States?

The Court: I don't know. I can't even remember telephone numbers. What is 338, does anybody know?

Mr. Lucas: Mail fraud.

Mr. Rose: I have a memoranda here somewhere on that section, and I will get to it, I guess, in time.

Now, then, the overt acts are the receipt by Wake Development Company on July 1, 1940, of the check for \$940.00; on July 2, the withdrawing from the bank account of Wake a check to cash for \$625.00; on July 2, 1940, the transmittal by United States money order to George Carlton; September 21, the Wake Development Company received from Miss Skinner the sum of \$300.00; and on September 22, 1939, the defendant Danziger withdrew the sum of \$230.00 from the Wake Development Company; and on September 22 at Los Angeles the defendant Danziger using the name of "Levy" purchased a Western Union money order of \$180.00 and transmitted to George Carlton; and on December 7, 1938,—this particular overt act is one which would, necessarily, even if it were significant, be barred by the statute of limitations—using the name of "T. Mack" bought a Western Union money order for \$102.56 payable to George Carleton; and on December 26, 1940, here in Los Angeles the defendant Danziger bought six postal [1376] money orders in the amount of \$530.00 payable to George Carleton; on August 12 at Los Angeles Danziger under the name of "Levy" purchased a postal telegraph money order for \$646.58 payable to George Carlton.

Now, from a consideration of these antithetical and paradoxical and conjunctive and disjunctive allegations I would like to know—I certainly can't find out from anything set forth in this count—

when this purported conspiracy is asserted to have been formulated. The acts, as I pointed out, which are made the basis of constituting this thing here are all acts, except the one of December 7, 1938, acts occurring in '39 and '40. The seventh overt act is December 7, 1938, which is \$102.56 Western Union purchase of a money order.

I submit your Honor, that this particular count apparently is an attempt to put a cow catcher under the series of preceding and antecedent acts just as we have in front of a train. Having charged the conspiracy under the so-called Securities Act as formulated in '39, and having attempted to create an offense by the fact that a bank received a check, sent it through the mails, he claims that these things constitute an offense; having claimed that a letter says, "I acknowledge your letter" that that was an offense; and having set up this clever piece of chicanery pulled on Mr. Hazelton in 1940 in March by Mr. Warren here—they now reassert that the conspiracy was to commit all of the acts [1377] pleaded before, and that the overt acts—they are very gracious, because as I understand the law each overt act once a conspiracy is shown in fact to have been formulated, the conspiracy itself becomes an offense and each overt act is a separate offense, so they are very gracious, your Honor, to have set out nine overt acts here—did I cover them all? Yes—and only seek to charge one offense. I am not going to take your Honor's time in any further argument and discussion of this particular count; I am going to submit a motion.

I move on behalf of the defendant J. M. Danziger in respect to Count 17 of this indictment to quash, dismiss, and annul the same on the following grounds, severally: One, that said Count 17 does not by appropriate allegations charge the commission of a public offense, that the allegations therein as a matter of law are insufficient, that the—if your Honor wants me to point out the insufficiency, I will be glad to do it, although I feel that there is no point in my assuming that your Honor requires any elucidation.

What is the last point?

(The record was read.)

Mr. Rose: (Continuing) That they are paradoxical, that they are unintelligible, that they are inimical to the respective statutes referred to and mentioned as part of the allegations of said count; that there is not sufficient [1378] evidence before the Court at the conclusion of the government's case to establish that the form, character, and nature of conspiracy purported to have been outlined and set forth in the said Count 17 was, in fact, formulated as therein charged or elsewhere or otherwise; that the purported overt acts which are pleaded as to all save overt act No. 7 do not constitute such an act as is contemplated as being the perpetration of any offense cognizant under the laws of the United States, and as to said Act No. 7 that the same, in addition to the fact that such act does not constitute an overt act in the form contemplated by the laws of the United States as a public offense, is an act committed prior to the

statutory provisos—that is, the statute of limitations, prior to the filing of this indictment.

For the reasons herein presented and each and all of them, singularly and severally, I move that said Count 17 be quashed, annuled and dismissed as to the defendant J. M. Danziger, individually.

The Court: Decision is reserved.

Mr. Rose: Incidentally, your Honor, there are no defendants outlined in the allegation of Count 17, they don't even say "The defendants named in the first count", or in any part of the antecedent part of the indictment; that is left to surmise. I assume the defendants at the time to the Grand Jurors unknown.

I submit to your Honor a motion to quash, now, and [1379] dismiss said Count 17 as is sought to charge the Trinidad International Petroleum Corporation with being a party to the purported conspiracy therein alleged, and adopt by reference with the same force and effect as if I were to restate them all of the matters and the things, grounds and reasons presented in support of the defendant J. M. Danziger's motion as to said count.

The Court: Decision is reserved.

Mr. Rose: I move that your Honor enter an order of quashing or dismissal as against the defendant Wake Development Company of said Count 17, and I adopt by reference as if now reiterated and made a part of this motion in behalf of said corporate defendant each and all of the grounds, reasons, matters and things submitted presented in support of the defendant J. M. Danziger's motion in regard to the particular count, namely, 17.

The Court: Decision is reserved.

I am going to speak for a few minutes now, Mr. Rose; not too long, I hope. I have before me now for decision fifty-two motions by number. I treat for present purposes the motions beginning with No. 4 as motions for a finding and judgment of not guilty, this being a trial without a jury. It has been my practice, and I think the practice of other United States Judges, I think it is supported by common law practice, I have so understood it, to reserve decisions on motions for a directed verdict where there is a [1380] jury, and for a finding of not guilty where there is not a jury, made at this stage of the case, namely, at the conclusion of the government's evidence. I say it has been my practice, and I know others, to reserve decisions on such motions until the end of all of the testimony. You will notice we have gone along here and that I have reserved decisions on these motions without stating the time at which I intended to pass on them. I think in fairness to the defendants in this case that I should and it is my present intention to rule on most of these motions at this time, contrary to the usual practice that I have followed.

Motions 1, 2, and 3, which I have not classified as motions for a finding of not guilty, motions 1, 2, and 3 are denied with exceptions to all of the defendants as to all of the motions.

All of the other motions, other than the motions directed to the registration counts, which are 8, 9, 10, and 11, all of the other motions, I repeat, other

than the motions directed to the registration counts are denied, with exceptions to all of the defendants.

Decision is reserved until the end of the whole case on motions directed to the registration counts, because I have been unable to make up my mind right now as to what I should do about them, and it may be that I will want further argument as to that before the conclusion of the case.

Mr. Lucas: I want to say at this moment, your Honor, that I have in court [1381] Mr. Black from the Securities and Exchange Commission, who is the interpretive attorney for that Commission.

The Court: I told you at the opening I wanted to follow my own schedule this morning.

That completes the ruling on the motions that are before me, and the defendant will now proceed with the introduction of testimony.

Mr. Rose: As I understand it, save and except—that is, decision is reserved as to 8, 9, 10 and 11?

The Court: Right.

Mr. Rose: And as to the others there has been a ruling of denial with exceptions allowed?

The Court: With exceptions, yes.

Mr. Rose: Very well. Come forward, Mr. Danziger, and take the stand. [1382]

JACOB MORRIS DANZIGER,
called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.

(Testimony of Jacob Morris Danziger.)

The Witness: Jacob Morris Danziger.

Mr. Rose: I think I will take the time to correlate these papers later.

The Court: Mr. Rose, I want to extend to you every courtesy that I can. I know it is a serious matter for you and a serious matter for your client. If you want to wait until this afternoon before starting, because of the turn the case has taken, it is all right.

Mr. Rose: No, your Honor; I think I can very well take up the time that is available until noon, and then I can assemble certain documents and consistently carry in mind what phases I have and have not covered. I feel I can cover some matters of this character and then take my own time during the noon recess to assemble the papers. [1383]

Direct Examination

By Mr. Rose:

Q. Mr. Danziger, you are a citizen of the United States? A. I am.

Q. And you reside in the City of Los Angeles?

A. Close to the city.

Q. Where do you reside?

A. I live at 1356 South Greenwood Avenue in Montebello.

Q. You are a member of the Bar of the State of California? A. I am.

Q. Incidentally, how long have you resided in this community?

A. I have been here 60 years.

Q. How long have you been a member of the Bar of the State of California?

(Testimony of Jacob Morris Danziger.)

A. Approximately 40 years.

Q. Other than the practice of law, Mr. Danziger, have you been connected with any business enterprises?

A. Well, I would say I have been in the oil business since I was 21 years of age actively until about ten years ago.

Q. Now, in what phases of the oil business have you been interested or participated?

A. Well, I think practically in every phase of it, Mr. Rose. Our companies—the companies that I was connected [1384] with were producers, refiners, and marketers of oil, which embraces all the features of the oil business. I was an active officer of all of those companies from the time I first came with them.

Q. Have your interest in any of the companies, over the course of years with which you were connected in this oil industry, ever had anything to do with the promotion and sale of its securities?

A. No.

The companies that I was connected with, they were not promotions and they never sold their securities.

Q. So, so far as your experience and association in the oil business, have you ever, other than your endeavor to secure financing for the Trinidad International Petroleum Company here, had anything to do with the sale or the promotion of the sale of the securities and stock of any character or nature?

(Testimony of Jacob Morris Danziger.)

The Court: Before answering that question, I want to say something. Through inadvertence on my part, and I am sure on the part of the government, there slipped my mind, and Mr. Lucas has failed to remind me, the number of that count which he stipulated might be dismissed.

Mr. Lucas: Number 7.

The Court: What I said a moment ago is amended, Mr. Rose.

Count No. 7 is dismissed on the stipulation of the government. [1385] The ruling otherwise stands.

Mr. Lucas: Thank you, your Honor.

Mr. Rose: Will you read the question, please?
(Last question read.)

The Witness: Not to the public in any way. Our companies were founded on sales to a group of our own associates of the securities which were issued when we created the company. But they were not sales, as you call them, to the public in any fashion. [1386]

Q. Addressing ourselves to the subject of the Trinidad International Petroleum Company, the corporation named as a party defendant in this indictment, when did you first come in contact with any phases of that corporate entity?

A. In the year 1934.

Q. At that time had the corporation been formed? A. No.

Q. It was formed in '34?

A. That is my recollection. It was either in '33 or '34. I think it was '34.

(Testimony of Jacob Morris Danziger.)

Q. It was formed prior to the enactment of the Securities Act, wasn't it?

A. Just about the time of the enactment, Mr. Rose.

Q. Well, that would leave it, then, in '33 as distinguished from '34. A. Then it was '33.

Q. What steps, if any, did you take to ascertain what Trinidad Company possessed in the way of rights, in fact, or potential earnings, and so forth?

A. Well, I first made inquiry of a man named R. W. J. Sutherland in England, whom I had been informed had been the heaviest investor and the head of two former British oil companies that had had these same properties many years before, and on which they were reputedly stated to have done some development work. I wrote him inquiring concerning the [1387] properties and concerning certain recommendations that had been made to me by Mr. Thomas Hill who was one of the owners of the properties, who was in New York at that time, and who first talked to me about it.

Q. Without taking up too much time with detail, will you give us some of the high lights of what you ascertained?

A. Well, Mr. Sutherland said that he had organized two companies some years before that took over from Mr. Hill and his associate owners leases on these particular properties. He told me that he had a report made by a geologist named Falconer, F-a-l-c-o-n-e-r, whom he had employed at

(Testimony of Jacob Morris Danziger.)

some very large price to report to him on the properties. He subsequently sent me a copy of that report.

Q. Incidentally, let's pause here for a moment. I believe I can lay my hands on that. What did you say the name was?

A. Falconer. It will be some loose leaf documents, Mr. Rose; not that Huntley-Huntley report that you are looking at.

Q. Well, let's go on; I can't place my hands on it.

A. Mr. Sutherland also told me, this was by letter, that he had drilled two wells or caused to be drilled on the property two wells. He told me how deep they were. He said that one of them was—they both had oil, and one of them was still flowing oil; that it was in mechanical difficulties, there were a lot of tools in the hole and they weren't able [1388] to finish it. He told me other details of his difficulties in having the properties drilled due to his not understanding the oil business. He was a coal merchant.

Q. Just a minute.

Mr. Rose: At this point I have found a number of pages which, offhand, appear to be Falconer's.

Q. By Mr. Rose: I have exhibited to opposing counsel a memoranda that I find amongst some of the papers handed to me, and I will ask you if this is the Falconer——

A. Mr. Rose, could I ask you to get my glasses for me? Yes, this is the report that Mr. Suther-

(Testimony of Jacob Morris Danziger.)

land sent me. And it also contains a report of another gentleman named McCall, from whom he also said he had gotten some information concerning the properties before he drilled them.

Mr. Rose: I offer this as the defendants' exhibit in evidence next in order.

Mr. Lucas: To which we object, if the Court please, first, on the ground that there is no proper foundation for the introduction of the document, in that it is palpably a copy and not a signed original, and, therefore, no foundation is laid. Further, that it is hearsay and secondary evidence, and deprives us of the opportunity of cross examining the person who made the alleged report.

Mr. Rose: I would like to be heard on that.

The Court: It is not necessary. I am going to give the defendant a wide range, Mr. Lucas. I imagine there won't [1389] be many objections that you make or can make that will be sustained.

Mr. Lucas: I just did that to protect the record.

The Court: It is admitted.

The Clerk: Defendants' Exhibit S.

(The document referred to was marked as Defendants' Exhibit S, and was received in evidence.)

Q. By Mr. Rose: Mr. Danziger, I interrupted you, since I was able to find the item that has just been admitted. Will you carry on from there?

A. He told me, by letter, of a lot of difficulties he had had in getting the properties developed. I can remember one outstanding statement that he

(Testimony of Jacob Morris Danziger.)

made; that he had sent some very large amount of materials to the properties that never reached the properties. And he told me that there had been expended in acquisition and on the properties a sum in excess of a million and a half pounds.

Q. That is in English money? .

A. In English money. He spoke very highly of the properties. He confirmed what Mr. Hill had told me; that the properties belonged to Mr. Hill, Mr. Gaskin, and to Mr. Allahar. Those are the only outstanding things that I can remember that he told me. But if you wish, I think I have a lot of his letters that would give more detail.

Q. Well, I intend to read some of those that tie in with around the period we are concerned with, your meeting [1390] of Carmen or Carter. I don't want to go back too far except to hit the high lights. How about this report of the properties by Huntley & Huntley? Does that have anything to do with this thing here?

A. It has to do with these particular properties. After the company was organized and I was endeavoring to sell some of the shares which the Wake Development Company received from the owners of the property, I had been doing some legal work for a group that owned a couple of companies called South American Oil Fields and All Americas Company. In this work that I was doing I ran into the fact that a subsidiary of theirs, the Latin American Petroleum Company, had at one time apparently had something to do with these

(Testimony of Jacob Morris Danziger.)

very same properties, and I found in their file a report by a geologist Huntley & Huntley, who were well known in the profession, which is the report that you have there, which concerned these very same properties, in part.

Q. Did you give consideration to this report, insofar as it affects the properties in which the Trinidad Company has an interest, in formulating an opinion as to its potentialities?

A. Not before the Trinidad was organized. That report I took into account in fortifying my opinion and in concluding, further, that they had good properties. I didn't get that report, I didn't run into it until some time after the Trinidad Company was organized. [1391]

Q. I want to be sure. Is this the one you are talking about?

A. Yes. This report covers other properties of this same company, some in Venezuela; but the properties referred to in this report under the title of "Trinidad" are a part of the properties that the Trinidad International Petroleum Company have and then had.

Mr. Rose: I offer this next in order, your Honor.
The Court: Admitted.

The Clerk: T.

(The document referred to was marked Defendants' Exhibit T, and was received in evidence.)

The Court: Did I state that the other one was admitted?

The Clerk: Yes.

The Court: We will recess.

(Whereupon, at 11:55 o'clock a. m., a recess was taken until 2:00 o'clock p. m.) [1392]

Los Angeles, California,

Thursday, February 1, 1945. 2:00 p. m.

Mr. Rose: Your Honor, the witness has called it to my attention that he finds it a little difficult—he wants to face the Court, and if I stand here he has to turn his back to the Court, so if it is agreeable to the Court I will resume my stand at this point.

The Court: That is all right.

JACOB MORRIS DANZIGER,

called as a witness by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Mr. Rose: The last question and answer, please.

(Question and answer were read.)

By Mr. Rose:

Q. Incidentally, was there to your knowledge any relationship between the majority stockholders of the Trinidad International Petroleum Company and the fee owners of the property in this Trinidad deal?

(Testimony of Jacob Morris Danziger.)

A. Well, the owners of the property organized the company and turned in the properties for the stock of the company, 500,000 shares, and 165,000 of the 500,000 went to Wake by an arrangement, and the owners kept and still have the 335,000 shares in the company, and they own a great majority of the company today. [1393]

Q. Then, I take it that the shares of stock which ultimately found its way into the treasury of Wake Development Company and has been referred to in these proceedings as the personally owned stock of the Wake Development Company, was a transfer made of the holdings originally issued to those that put in the properties for the stock?

A. That is correct; and we called it vendor shares.

Q. And you have indicated here you have spent most of your adult life in the oil business, and all phases of it; will you indicate to his Honor here, if you had any such view, what formulated in your mind that the properties taken over by the Trinidad Company were of any value?

A. Well, for the following reasons. The reason I got enthused about the property was, first, there was oil coming out of a well that was only 1700 feet deep, of a light gravity. You very seldom, if ever, find light oil at a shallow depth in any drilling operation. You find light oil, but generally at a great depth. It is very seldom—I only know of two or three cases—that you find light oil at a shallow depth. I had an analysis of the oil

(Testimony of Jacob Morris Danziger.)

which Mr. Sutherland send to me, and it showed it to be a very light oil. Next, in Trinidad the largest oil company in Trinidad only had 500 acres of land. It isn't an area of great large acreages like in Venezuela and Mexico. Now, this company had 2100, 2075 acres of land. And, next, the properties were scattered. You very seldom find 2,000 acres [1394] of oil land in one body. You may have 2,000 acres of land that is in a body, and if you get two or three hundred acres of it oil land you are very lucky. The fact that the areas were scattered also made them attractive. Next, the oil was in a British colony. British colonies were favored in tariff regulations as between Great Britain, which is one of the great consumers of oil in the world, over non-colonies. Another thing that was very attractive was this: I looked into the basis of the tenure, we will say. Who owned the oil under the ground? In Trinidad the great bulk of the areas in the oil fields, the government owns the oil under the ground; the land owner doesn't own it, and you have to deal under a license from the government with all of the difficulties that you have in having a government organization as your landlord. These particular lands, they were among the very few areas in Trinidad where the land owner owned the oil under the ground.

I can go into the details of how that happens to be, but that is the fact.

Now, those facts, combined with the fact that Trinidad was somewhat in the limelight at that

(Testimony of Jacob Morris Danziger.)

time, it had been gradually increasing its production a few years before, I think Trinidad had produced two or three million barrels of oil in a year, I mean the island, not the company, and that year the production had gone up to ten million barrels. It was in the limelight as an oil producer. And those things [1395] combined gave me some real enthusiasm for the properties.

Q. I have exhibited to counsel for the government what appears to me to be a map. I will now show you the map and ask you if you can state to me in whose handwriting that is.

A. This map is in the handwriting of R. W. J. Sutherland. He is the man who had been reported to me and subsequently confirmed to me that had organized these two British companies that had drilled the wells on these properties, and at some time he sent me this map, which is only one of the two hundred different parcels of ground, and that is in his handwriting.

Q. Does that particular map indicate the existence of a well on this particular portion of the property?

A. This map covers one of the parcels that has the oil well drilled on it that we call in our correspondence as being on Mandingo and some road I forget the name of. But this map shows the well location of it, and it is so marked there.

Mr. Rose: I offer this map as defendants' exhibit in order, your Honor.

The Court: It is admitted.

(Testimony of Jacob Morris Danziger.)

The Clerk: U.

(The document referred to was marked as Defendants' Exhibit U, and was received in evidence.)

Q. By Mr. Rose: In testifying here a few moments ago, [1396] Mr. Danziger, you referred to reports—as I go along, I may jump from time to time to some exhibits that are marked for identification, as long as we are talking about the subjects. I have here in my hand Exhibit Q, for identification, which purports to be both photostatic and original publications of a publication called *The Petroleum Times*, one of which is dated in October 29, 1932, and then you have “*The Petroleum World, World News of the Empire*”, and you have an item from the *Oil Weekly* of April 23, 1934, referring to properties in New Mexico, and an item marked March 19, 1934, respecting New Mexico oil leases; and I will ask you whether these are photostats or originals of these publications they purport to be.

A. They are, Mr. Rose. I had these photostats made after examining the publications, I think, in the library in New York when I was going into the merits of Trinidad and these properties at or about the time that the proposition first came to me.

Q. Now, at any time did you exhibit these documents to the person who is known as Warren and who has been referred to by various names in this proceeding?

A. Well, I showed these to the Great Eastern

(Testimony of Jacob Morris Danziger.)

people, Mr. DeHart and Mr. Carmen who were talking to me at the time about a contract on some Trinidad stock that the Wake Company had, and I showed——

Q. We will go into that later. I just wanted to know, [1397] Mr. Danziger, whether these had been shown to DeHart and to Mr. Warren.

A. They were.

Mr. Rose: I now offer these items which constitute Exhibit Q, for identification, into evidence.

The Court: Admitted.

(The document referred to was marked as Defendants' Exhibit Q, and was received in evidence.)

Q. By Mr. Rose: I find here in evidence, Mr. Danziger, a series of documents that pertain to certain New Mexican properties, an operating agreement, and a proposed form of contract. There has been mention made of some New Mexican properties purportedly connected with this Trinidad enterprise. Will you briefly tell us how this New Mexican phase of the factors came into this Trinidad deal?

A. Well, it was part of the arrangement between Wake Company and the Trinidad properties that if we saw any oil opportunity in the United States that might appeal to them as an oil proposition, that I should put it up to them. And I had run into this New Mexican possibility in some fashion, I don't remember how, but I did present it to them. I think those papers there, which were filed

(Testimony of Jacob Morris Danziger.)

with the Securities and Exchange Commission, are the original documents under which I acquired some hold on that property.

Q. Were these rights such as are reflected in Exhibit F, and the collateral agreements in respect to this New Mexican [1398] phase of the properties, turned over to the Trinidad Company?

A. They were; and an application was made to the Securities and Exchange Commission to authorize the sale of some stock for the purpose of developing those particular properties. You had to recite in your application what you wanted to use the money for.

Q. And that is covered in Exhibit A, which is the registration?

A. Well, it is covered in the registration. I don't know whether that is Exhibit A or not.

Q. Did you personally receive anything, or the Wake Company, other than that original agreement between you and the organizers of Trinidad for this phase of the deal?

A. Oh, no. We turned that in just as it came to us. We made no profit on it or anything of that character. We just offered them the opportunity.

Q. Incidentally, I find in passing here a photostat of a geological report on the New Mexican features here. Briefly, who made that report, the geologists on the New Mexican phase of it?

A. That is made by the State Geologist of New Mexico, a man by the name of Wells, and he refers

(Testimony of Jacob Morris Danziger.)

in that to Chupadera Anticline. It is on the Chupadera Anticline that those properties are located.

Q. I now hand to you a photostat marked Oil and Gas Resources of New Mexico, and meridian area map, and I will [1399] ask you whether the material and map therein outlined pertain to the New Mexican properties in which the Trinidad Company was interested. A. It does.

Mr. Rose: I now offer in evidence in behalf of the defendants the exhibit just referred to.

The Court: Admitted.

The Clerk: V.

(The document referred to was marked as Defendant's Exhibit V, and was received in evidence.)

Q. By Mr. Rose: I want to clear this thing up in my own mind, at least. You say that the registration, which is exemplified by the photostatic document produced by the S. E. C., which is a so-called registration, was a proposed authorization to sell stock only in connection with the New Mexican phase of the transaction? [1400]

A. Yes, that is correct. When you register an issue you have to tell, as we did in that registration, what you want the money for. And we were seeking to raise the money to develop those New Mexican leases, and we so recited in the registration application.

Q. Well, was there any effort made to raise any money by a registration with the Securities

(Testimony of Jacob Morris Danziger.)

and Exchange Commission to finance the development of the Trinidad company?

A. No, there was not. That financing was being done over in England.

Q. When had negotiations to finance that phase of the properties commenced?

A. Mr. Hill, one of the owners of the Trinidad properties, went to England immediately after the Trinidad company was organized. He informed me and the other members of the company that he had arranged the finances for the development of the Trinidad properties in England, and he went over immediately after the company was organized for that purpose.

Q. Let me ask you this: Prior to the time you met DeHart or Warren—I prefer to refer to him consistently as Warren, and you will understand who I am speaking about whenever I refer to him as Warren. You have that in mind?

A. Yes, I have that in mind.

Q. Before you met that gentleman Warren, or DeHart, had any arrangement been made respecting your leaving for Europe? [1401]

A. Yes, Mr. Rose. I had had some telegraphic and letter correspondence with Mr. Sutherland concerning some finances for the company and the sale of oil and so forth, and had some form of a commitment from him, if I remember correctly, before I ever met Mr. Carmen or Mr. DeHart.

Q. I have here marked at present, for identification, Exhibit H, which purports to be a Postal

(Testimony of Jacob Morris Danziger.)

Telegraph original from London addressed to you, reading, "Very necessary cable me full authority deal Trinidad lands Sutherland," which is shown to have been either cabled or received on the 15th of February, 1935. Did you receive this in the course of your preliminary activities prior to going to England? A. I did receive that, yes.

Q. Did you exhibit that to Mr. Carmen, or, rather Warren?

A. I am very sure that I did. I told him everything that indicated that the company was on its way.

Mr. Rose: I now offer Exhibit H, for identification, into evidence.

The Court: Admitted.

(The document referred to was marked as Defendant's Exhibit H, and was received in evidence.)

Q. By Mr. Rose: What was done, if anything, by you in connection with the checking of the titles of the properties involved in this Trinidad transaction?

A. Well, after the company was organized, just exactly [1402] when I don't know, but I can find out from some records I have, I know that we received from Mr. Hill, one of the owners, a great mass of title papers. I remember them because they were so large. They were a stack about that high (indicating).

Q. Indicating about two and a half feet.

A. And I sent them to Los Angeles to my asso-

(Testimony of Jacob Morris Danziger.)

ciate, Mr. Andrews, who was an attorney, for him to check and report on those titles. And he did so.

Q. There has been some allusion made in the course of the testimony here, I think Mr. Mainland mentioned it, that certain original title papers and agreements relating and pertaining to this Trinidad deal were asserted to be in the possession of some solicitors in England. Do you have that in mind?

A. Yes, sir.

Q. Tell us something about it.

A. When I went to England I took with me the title papers and all the data that I had concerning the company's properties. Among them I took these particular titles. And when I completed the arrangement over there I lodged with the attorneys for the bankers or brokers, whatever you want to call them, that I made the arrangement with—their solicitors examined the titles and I lodged with them the title papers. The firm was Lindo and Company; the individual was a Mr. Brown. And—I think that answers your question. I needn't volunteer anything. [1403]

Mr. Rose: I am exhibiting to counsel a couple of documents.

Q. By Mr. Rose: Have those papers ever been returned to this country?

A. Yes, they were returned when the Securities and Exchange Commission made an investigation of the Trinidad company, they asked for those title papers and I sent them out. I think I was then in England. I sent them out here and they

(Testimony of Jacob Morris Danziger.)

were given to them. They finally got back, and I finally got them back in England and left them with the solicitors when I left there.

Q. I have exhibited to counsel a British post-card addressed to you, dated the 23rd of December, 1939, which purports on its fact to come through the mails to you, and I will ask you whether you received this document in the course of the mails?

A. I did.

Q. What does that document pertain to?

A. It is a letter from Mr. Sutherland to me in which he tells me that he had gotten from Mr. Brown of Lindo and Company the documents referred to in a letter that I sent him. We were in the war then, or Britain was, and I wanted to get these documents out of London and asked Mr. Sutherland if he would get them; and this is his advice that he had gotten them.

Q. Here is a blue document bearing the address [1404] 36 Oxford Road Birkdale, Lancs., "Receipt for box or sealed parcel"; what is this?

A. Then subsequently Mr. Sutherland sent me this receipt. He had lodged these records at the place indicated here and sent me this receipt as evidence of where they are, and I guess they are still there.

Mr. Rose: I offer these two documents that have been referred to and identified by the witness as one exhibit in relation to the subject of place and location, your Honor, of the particular documents.

The Court: They are admitted.

(Testimony of Jacob Morris Danziger.)

Mr. Rose: In passing, I notice that this Englishman here, back in 1939, is speaking of the end of Hitlerism.

The Clerk: W.

(The documents referred to were marked as Defendant's Exhibit W, and were received in evidence.)

Q. By Mr. Rose: Let's see if we can cover a little ground here. Let's get to Warren and DeHart. When, to your recollection, did you meet Mr. Warren?

A. I met them about a month or thereabouts before I went to Europe, and I went to Europe in September '35. Isn't that correct?

Q. Do you have your passport with you?

A. I gave it to you, Mr. Rose. I haven't got it with me.

Q. Well, as you know as a lawyer, I can't testify and [1405] I don't like to.

A. I can tell you an exact date if you let me see that passport.

Q. Let's clear it up with certainty. Mr. Danziger, I know I had it here yesterday, but I think I turned it back to you. Do you think it might be in your brief case?

A. It may be. September, 1935, is my best recollection of when I went. I say that I met Mr. DeHart and Mr. Carmen about a month or six weeks before that.

Q. Will you relate, if you will, how did Mr. Warren happen to meet you?

(Testimony of Jacob Morris Danziger.)

A. He came to me or first telephoned me and told me that a Mr. Howe, whom I knew in New York, had told him that I had a company that owned a lot of good looking properties, and he wanted to talk to me about them, and he came up to the hotel to see me. By him I mean Mr. Carmen. I told him the history of the Trinidad company and what I thought of the properties and of the financing that had been arranged over in England, and told him everything that I knew about the New Mexico properties that the company had. I told him about the registration with the Securities and Exchange Commission for the issue for that stock. In fact, I told him—as I remember, I told him everything that I knew at that time about the properties.

Q. Did you and he discuss the subject of selling any securities? [1406]

A. Mr. Carmen told me then——

Q. Incidentally, let's clear this up, then we won't come back to it. It occurs to me and I would like to develop it. Let us clear up this business. You keep talking about Carmen. Let's clear that up. What name did you meet him under?

A. It was either Carter or Carmen; I don't know which.

Q. Well, in connection with your early meeting with him did both of those names get into the picture in some way? And if it did, will you please briefly tell us about it?

A. Well, I met him either as Mr. Carmen or

(Testimony of Jacob Morris Danziger.)

Mr. Carter, and after we got started on some business he told me that he was going to do the business in the name of the opposite. If it was Carter when he was introduced to me, he told me he was going to do it as Carmen; if it was Carmen, he said he was going to do it as Carter. He told me he had some difficulties with his wife about financial matters and he didn't want any monies coming to him from anybody under the other name.

Q. Go ahead.

A. He told me that he had been connected in some financial way in the handling of the securities of a company called the Great Eastern Natural Gas Company. He told me somethig about it. I had never heard the name. He said they had spent a very large sum of money drilling some gas [1407] wells out in eastern New York. I remember the details very particularly, because I didn't know at that time there had ever been any gas out in Eastern New York, and I subsequently investigated and found there had been. And he said that he believed he could handle a large portion of the stock of the Trinidad company. I explained to him that the company, as a company, didn't wish to do any financing concerning the Trinidad properties; and the finances were being arranged and had been arranged in England; that I could let him have some small block of shares of the Wake Development Company. I explained to him how we got them; that I was going on over to England very shortly, and that I could use, very comfortably,

(Testimony of Jacob Morris Danziger.)

some money to get me over there. And he wanted to handle 100,000 shares, and I told him no, that we didn't want to sell any such quantity of stock, that we would sell but a few. Well we dickered back and forth; I didn't want to sell 20,000 shares, but he finally made an agreement with me, he and Mr. DeHart, who he had brought into the picture as the president of the company, and we entered into a written agreement, that I think is in evidence here between the Great Eastern Company, signed by Mr. DeHart, who carried on the negotiations with me. I think the second visit Mr. Carmen didn't even stay; he left Mr. DeHart with me, and I negotiated a loan with Mr. DeHart. Subsequently Mr. Carmen came into the picture——

Q. Wait a minute. I don't want to try to present the [1408] evidence here as just a continuous story. I would prefer to clear up certain factors that stand out in my mind at a time, if you don't mind. Let's relegate ourselves now to the business of this Great Eastern transaction. I want to know what was discussed and about that phase of the transaction. Let's stay with that until we clean that up, at least sufficiently so we will know definitely what your version of that transaction is.

A. Well, either Mr. DeHart or Mr. Carmen, or both, told me that if they could offer a right of some character to their old stockholders, that they believed by doing something for them for their old stock, that they could market some of the Trinidad stock that the Wake company had. I think

(Testimony of Jacob Morris Danziger.)

in my telling Mr. Carmen or Mr. DeHart or both of them about the situation over in England, I had explained to them that there had been a lot of money spent in acquiring and developing the same properties in England by two large British concerns, and that the owners who had taken the property away from the British concerns and had organized the Trinidad company had provided a theory or system by means of a preferential profit-sharing note that they were going to give those old stockholders for the interests that they had had in those properties; and either Mr. Carmen or Mr. DeHart, or both of them, suggested that they thought some form or right could be created for their stockholders, and suggested to me that inasmuch as we were apparently building [1409] an organization only to develop in Trinidad, that if we discovered oil or gas in New Mexico, that they had an organization that could market that oil and save us the difficulty of creating such an organization. And by discussion there was generally developed between us the ideas that were put into the written contract, which goes into the fullest detail as to what the Great Eastern Company were agreeing to do for the Trinidad company concerning the New Mexico properties.

Q. Without taking time myself to become familiar with the number of that document, I think we all have that in mind. At the time that agreement was drafted and signed by DeHart and yourself, did you contemplate using that agreement as

(Testimony of Jacob Morris Danziger.)

a subterfuge in any manner to promote the sale of any securities?

A. Not the slightest intention of doing so.

Q. There has been some mention made here, and it has been introduced—in fact, produced by Warren—an exhibit in the handwriting of yourself, in which you were drafting a proposed form of communication to go out to certain stockholders. Do you have that one in mind?

A. I have it in mind, and I drew that for them.

Q. You did? A. I did.

Q. In the activity relegated to that time when this proposed draft was being prepared, was there any discussion as to what persons or class of persons it was intended to [1410] receive that particular communication?

A. It was intended for the stockholders of the Great Eastern Natural Gas Company.

Q. Were any others contemplated, discussed in any respect at that time? A. No.

Q. Was there any discussion in connection with the sale to Great Eastern Gas Company stockholders of those securities, other than those owned by the Wake Development Company?

A. None whatever.

Q. Now, there have been introduced in evidence here a series of papers that were drawn up around that time.

Mr. Rose: Will your Honor bear with me? I didn't get a chance to go over these exhibits that are here. I would like to clear that up if I may.

(Testimony of Jacob Morris Danziger.)

Q. By Mr. Rose: Mr. Danziger, there is now in evidence Government's Exhibit No. 42, which is on the letterhead of the Trinidad International Petroleum, Ltd., and I will ask you whether prior to your departure from England that document, in the form in which it now appears, had been prepared?

A. Yes, it had. It bears my signature, Mr. Rose.

Q. Here is Exhibit No. 41, dated October 28, 1935, under the letterhead of the Great Eastern Natural Gas Company. Did you ever see that prior to your departure for England?

A. No, I never saw that for a long time afterward.

Q. After this agreement had been made with DeHart and [1411] the Great Eastern Company, what discussions were had, other than what you have already indicated, concerning their activity in respect to the sale of any securities?

A. Well, I think shortly after the contract was signed Mr. DeHart told me, in Mr. Carmen's presence, that he was turning the whole business over to Mr. Carmen for handling, and to deal with him from then on. And I did have some dealings with him before I left for Europe a month or six weeks afterwards.

Q. I have in mind there have been introduced here some material that you turned over to either DeHart or Mr. Warren.

A. You mean those rights, the printed rights of

(Testimony of Jacob Morris Danziger.)

the old South American deal? I don't know just what you refer to when you say "material."

Q. What discussions did you have with Mr. DeHart and/or with Mr. Warren respecting the subject of only Wake Development Company's personally owned stock was to be sold?

A. I made it very clear to them that in view of the fact that the Trinidad company had a registered issue with the Securities and Exchange Commission, that they must be very careful and not in any way indicate that—or fail to indicate that the stock that they were offering to their stockholders was privately owned stock of the Wake Development Company.

Q. What steps were taken in that connection?

A. Well, I wrote a memorandum, which I think was here, [1412] a two-page memorandum——

Q. That is the one I am looking for.

A.——that Mr. Carmen produced here the other day, that I have been trying to find for a long time, in which I very distinctly emphasized that there would be no checks taken in the Trinidad name, and they must particularly say that the stock they were selling was the privately owned stock of the Wake Development Company. Now, I have seen, since we have been in this court room, that document.

Q. That is the one I am looking for at the moment.

Mr. Rose: Does your Honor have the document in mind?

(Testimony of Jacob Morris Danziger.)

The Court: No.

The Witness: It was a two-page thing on Trinidad stationery.

Mr. Rose: I know. I would know it the minute I would see it.

Mr. Mainland: It is Exhibit 112, I think.

Q. By Mr. Rose: I show you Government's Exhibit No. 112, a group of papers, and here is a two-page document at the end marked Trinidad International Petroleum, Ltd., Information for Company Representatives; is this the document you referred to?

A. Yes, that is the one, Mr. Rose. That is the document I refer to.

Q. While we are on Exhibit 112, I find attached thereto what purports to be—it looks like a reproduction procured [1413] in some form of a communication coming out of the offices of the Securities and Exchange Commission, from Washington, bearing the date, September 3, 1934, and is merely addressed to "Gentlemen;" I will ask you to examine that and state whether you have ever seen that document?

A. Not in that form, Mr. Rose.

Q. What do you mean by "not in that form?"

A. Well, I have seen a typewritten communication that I got from the Securities and Exchange Commission recently similar to that, but not—but it has a salutation or an addressee on it.

Q. Who is the addressee to whom that is addressed?

(Testimony of Jacob Morris Danziger.)

A. It is either Wake Development Company or Trinidad International; I don't know which.

Q. Did you ever have anything to do with placing in the custody, possession or control of the witness Warren this particular part of Exhibit No. 112, or any facsimile thereof?

A. I never did; and I never saw that before.

Q. I exhibited to Mr. Warren, during the course of his cross-examination, an envelope. I will ask you if you have seen that or a similar envelope before?

A. I have seen both this and similar ones before.

Q. Did you ever cause to be delivered to Mr. Warren facsimiles of this form of envelope?

A. Shortly after the agreement was made with the Great [1414] Eastern Company I directed the Los Angeles office to have a number of those envelopes printed and sent on to the Great Eastern people. I don't know whether it was to go to Mr. Warren or to Mr. DeHart or to the company.

Mr. Rose: Let me have the answer, please.

(The answer was read.)

Q. By Mr. Rose: But you know that this form of envelope actually went into their possession?

A. I do.

Mr. Rose: I offer this as Defendant's next in order.

The Court: Admitted.

The Clerk: X.

(The document referred to was marked as

(Testimony of Jacob Morris Danziger.)

Defendant's Exhibit X, and was received in evidence.)

Q. By Mr. Rose: What was the discussion, if any, precipitating the causing to be printed and placed in the possession of these Great Eastern people this form of envelope?

A. I provided them with the idea that they should make their remittances or their sales reports, or whatever they had to do in connection with this Great Eastern deal, direct to the Wake Development Company in their Los Angeles office.

Q. Mr. Warren testified here on his direct examination, and also on cross examination, about your having a conversation with him in substance or effect that salesmen, to your [1415] knowledge, used fictitious names and aliases. Was any such discussion ever had between you and Mr. Warren at any time? A. No, sir.

Q. There has been some discussion about meeting a Mr. Kramer while you were in New York. Did such meeting take place?

A. Yes, Mr. Carmen brought to my hotel a Mr. Kramer.

Q. Through whom did you meet Mr. Kramer?

A. Through Mr. Carmen. He brought him there. That is the first time I had ever seen him.

Q. I don't profess to remember everything in this case, but if my memory serves me, Kramer was referred to as, in a discussion that you assertedly had with Warren, that his true name was—what was it, Johnson?

(Testimony of Jacob Morris Danziger.)

A. I never heard that at any time. In fact, when Mr. Carmen cabled me about it he referred to him as Mr. Kramer. I never knew him in any other way.

Q. He has testified here, on both direct and cross examination, there was some discussion in his presence and in the presence of Kramer and yourself, whereby the subject came up that they could sell the whole issue of Trinidad stock. Was there any such discussion had?

A. Yes, I heard such a statement made by——

Q. I don't mean whether you heard him make such a statement here; but I mean the discussion——

A. Yes, sir, I heard such a discussion at the time it [1416] was made.

Q. It was made where?

A. In my hotel room in New York at the time that Mr.——

Q. Let's lay a foundation and you tell us what was said and how that phase of matter came about to be discussed?

A. Well, I remember it was shortly before I was going to Europe, and Mr. Carmen was trying to persuade me not to go.

Q. Who?

A. Mr. Carmen or Mr. Warren was trying to persuade me not to go, and he had brought to my room Mr. Kramer, who said he had made a sale, and that he could sell the whole hundred thou-

(Testimony of Jacob Morris Danziger.)

sand dollars worth of stock in the one place if I would simply wait a while until he got it done.

Q. What did you say?

A. I told him that we had no desire to sell that much stock, and that I had a deal in England that I was going over on to close it up, and that I wasn't going to wait for any such thing.

Q. In any event, there has been considerable said about some form of swindle that was pulled on a Mrs. Pierce, as I remember it. Did that happen after you left for Europe?

A. Yes, sir, it did, and it was reported to me by cable from Mr. Carter or Carmen.

Q. Before I take up that phase, I want to refer to a number of exhibits that are now marked for identification only, and see whether there are any factors here that may or may not [1417] make these a subject of consideration. Here I have Exhibit I, for identification, which purports to be a letter to you from—a letter to you addressed to the Barbizon Plaza from the Sutherland Company in London, and I ask you whether you received that letter at or about the time approximate to the date it bears?

A. Yes, I received it in the mail approximately five or six days after the date it bears.

Q. Did you at any time, to your recollection, exhibit this particular document to Mr. Warren?

A. I feel fairly certain I did. I kept him acquainted, as I saw him, with what was going on

(Testimony of Jacob Morris Danziger.)

over on the other side, and I most likely showed him this letter.

Q. Well, the point is I would like to clear that up a little more certainly before I make an offer of that exhibit. To your best recollection did you exhibit this document to him?

A. Yes, that is my best recollection.

Q. While I am presenting that to the court as an exhibit in evidence, will you examine these documents respectively J and R. Take J first.

Mr. Rose: I now offer, your Honor, Defendant's Exhibit I for identification, into evidence.

The Court: Admitted.

(The document referred to was marked as Exhibit I, and was received in evidence.) [1418]

The Witness: Have you a question on this, Mr. Rose?

Q. By Mr. Rose: No. I wanted you to first examine those documents.

A. I have read it. I recognize this one without reading it. I know what it is. [1419]

Q. I have before me, marked J for identification, what purports to be some communications from the Sutherland Company from London during the period of June, '35, and ask you whether you received that while you were in New York City.

A. I did. It didn't have these pencilled notes, which I apparently put on myself. Aside from that, I did receive that form.

Q. When, in relation to the part of June indi-

(Testimony of Jacob Morris Danziger.)

cated on this letter from the Sutherland Company, did you receive it, to your best recollection?

A. Well, it is dated June 14, and I would say on or about the 20th.

Q. Do you recognize that handwriting?

A. I do. That is Mr. Sutherland's handwriting. It is one you couldn't forget.

Q. And the reply thereto?

A. A carbon copy of my reply which I find in my file.

Q. Did you exhibit to the witness Warren these documents which now compose J, for identification?

A. To the best of my recollection, I did.

Mr. Rose: I offer this, your Honor, a document now marked J, for identification, into evidence.

The Court: Admitted.

(The document referred to was marked as Defendants' Exhibit J, and was received in evidence.) [1420]

Q. By Mr. Rose: Was this document which is marked R, for identification, bearing the designation "Information on Trinidad and Trinidad International Ltd. Properties" at any time exhibited by you to the witness Warren?

A. I know that it was. I gave him a copy of it.

Mr. Rose: I offer R, for identification, into evidence.

The Court: Admitted.

(Testimony of Jacob Morris Danziger.)

(The document referred to was marked as Defendants' Exhibit R, and was received in evidence.)

Q. By Mr. Rose: I would like to give a little attention to these two exhibits that are in evidence, namely, 103, which is a form of letter of the Wake Development Company saying, "The bearer of this letter whose signature appears in the lower left-hand corner * * *"; did you ever see this man or any person affix the signature of C. Cameron on this document? A. No.

Q. Or its original?

A. No, I never saw that until I saw it in the court room here the other day.

Q. Was this form of letter delivered in any manner to Great Eastern or any of its personnel?

A. Yes, sir, I think the letter without the signature in the lower left-hand corner was given to the Great Eastern people at or about the time they started to work under the contract. [1421]

Q. Here is an Exhibit No. 102, which seems to have some pencilled eradications and some memorandum. I will ask you whether you in any mode or manner participated in the preparation of that document or any facsimile thereof?

A. Well, I know the handwriting on it is not mine, and I don't think I had anything to do with its preparation.

Q. There has been some mention made here, generally, although I doubt whether the docu-

(Testimony of Jacob Morris Danziger.)

ment outlining the escrow has been produced in any form. There has been some testimony that you went to Wilmington, Delaware and set up an escrow. Do you have that in mind?

A. I do, sir.

Q. Tell us, briefly, about that.

A. Shortly after the Great Eastern arrangement was made, and shortly before I went to Europe, Mr. Carmen wanted me to go down to Wilmington, Delaware, to the office of the Great Eastern Company to complete an escrow of 20,000 shares of stock, which was covered by the Great Eastern contract. I went with him. I remember the occasion very well. We drove by automobile. We went to an office there, and I remember meeting a man who Mr. Carmen said was a Great Eastern—either representative or official, or something, named Dube, D-u-b-e, and we then completed an escrow with the Commonwealth Trust Company in writing; and then either then or shortly thereafter we deposited the certificates representing 20,000 shares. [1422]

Q. Now this escrow, in what manner was it to operate? The arrangements made with this escrow in Delaware, were these 20,000 shares to be issued to Great Eastern Gas holders through any form of correspondence from Los Angeles?

A. No. They were given authority to take from the 20,000 shares any number of shares if and when they could pay the Wake Development Company \$3.00 a share and the delivery of a share

(Testimony of Jacob Morris Danziger.)
of Great Eastern natural gas stock. The escrow was a written thing.

Q. I know; but none has shown up in any of these proceedings.

Mr. Rose: Have you got it, Mr. Mainland?

Mr. Mainland: What?

Mr. Rose: Have you any of the papers so we can be familiar with the terms of the escrow set up with that trust company over in Delaware?

Mr. Mainland: Not to my knowledge.

Mr. Rose: They must have been in your files at one time, weren't they?

Mr. Mainland: I don't know.

The Witness: Mr. Rose, I have recently seen something, I visualize the Commonwealth Trust Company's name on some letter-head. Maybe you haven't got it, but I have seen something since we have started the trial of this case.

Q. By Mr. Rose: There has been some testimony here given by Mr. Warren, on both direct and cross-examination, [1423] that prior to your departure for England the plan was developed in which he participated in the literary phases of drawing up some proposed letters that I think at one point was referred to by his Honor in a quizzical way as to whether that was a build-up, and I infer from Mr. Warren's testimony that he and you sat down prior to your departure for England and prepared a form of letters that were intended to come out of the Los Angeles office to these potential pu-

(Testimony of Jacob Morris Danziger.)

chasers of the Wake Company's shares of Trinidad stock. Did anything of that type take place?

A. No. The only letter which I had anything to do with is the first letter that is written in my own hand here, which I have seen in evidence; and that is the only letter that I had anything to do with preparing in connection with that transaction, and I went to Europe shortly thereafter.

The Court: We will break the afternoon at this point.

Mr. Rose: Very well, your Honor.

(Short recess.)

Q. By Mr. Rose: Let's advert a moment to the matter of such letters that you refer to. You stated a moment ago in your discussion in the preparation of any letters that were to be utilized in this proposed Great Eastern deal, that you only participated in the drafting of one. I show you 100 in evidence. That is in your handwriting altogether, is it? [1424]

A. Yes, that is all in my writing. There is nobody else's writing on that but my own.

Q. Is it all yours? A. Yes, sir.

Q. I take it that No. 42 is the final draft of that thing, is it? A. I take it so.

Q. So far as your recollection serves, this was the ultimate draft?

A. Yes, it has many of the paragraphs exactly as they are written in that first draft, so I am satisfied that is the final preparation of the document that started in my own hand there (indicating).

(Testimony of Jacob Morris Danziger.)

Q. In the course of this testimony there was some preliminary discussion had with you and DeHart and Warren; there has been some mention made of South American corporations and rights. Do you remember the subject?

A. Yes, I do, Mr. Rose.

Q. Was that subject discussed with Mr. Warren?
A. I told Mr. Warren——

Q. We can infer if you told him, that it was discussed. Go ahead.

A. Well, it was discussed with Mr. Carmen and with Mr. DeHart. I explained to them——

Q. Don't give us your conclusions. I don't want to take up very much time with it, but tell us what the [1425] discussion was about so he will know what that phase of the subject is in this case.

A. I told him that the South American Company had created a right for its stockholders, in view of the fact that it at one time had had, through the Latin American Company, which it controlled, had had some option for purchase of these very same properties.

Q. What was said about rights?

A. I explained to them that a right had been issued. I think I showed them the form of it. I had it.

Q. He has mentioned you showed him some kind of a form of South American right.

A. That is my memory.

Q. What is that?

A. That is my memory.

(Testimony of Jacob Morris Danziger.)

Q. Go ahead.

A. Well, I showed it to him.

Q. Tell us something about it. It has been left in the air here. It hasn't been cleared up. What was it all about?

A. I showed him a form of printed right, which I have seen in evidence here in this court room in the trial of this case. Mr. Carmen said he——

Q. No. I want to know how did that right come in. What did the South American people have to do with the right? That is something that hasn't been—— [1426]

A. The South American Company and the All Americas Companies were the owners of a company called The Latin American Oil Company. The Latin American Oil Company at one time had had these very properties under lease or under option, and they were the ones that had that Huntley & Huntley report made. I entered into an arrangement with Mr. Shale, the president of the combined group of those companies, wherein they offered to their stockholders by a right; they never circularized it, but they had a right printed, which I have seen a copy of it here in the court room; I explained all that to Mr. Carmen and Mr. DeHart, and Mr. Carmen said he wanted to go and see, wanted to feel out the possibilities of the Great Eastern deal while we were negotiating. And I got for him the names of some of the South American stockholders and gave it to him, and gave him some of the printed rights, and he did something

(Testimony of Jacob Morris Danziger.)

on it and reported back that he didn't think they were any good, or something to that effect.

Mr. Rose: I showed this to you during the course of the cross examination of the witness Warren, but failed to have it marked. Do you remember it now?

Mr. Lucas: Go ahead and mark it and offer it, and if I think of any objections I will voice them.

Q. By Mr. Rose: I have exhibited to counsel for the government the carbon impression of a letter to R. W. J. Sutherland in London in October of '34, to which is attached [1427] an outline of an agreement on paper bearing "J. E. McGregor, Financial Consultant", with some London address. In whose handwriting is this purported document that mentions an agreement?

A. That is Mr. Sutherland's handwriting.

Q. Can you tell us, first, did you ever exhibit this document to Mr. DeHart or Mr. Warren?

A. I am very sure that I told them both before the negotiations, and my best recollection is that I showed them the correspondence from London concerning them.

Q. The matters that were set forth in this document were actually under consideration at that time?

A. They were. And these two yellow sheets dated October 5, 1935——

Q. '34, isn't it?

A. I can't tell; it is 4 or 5, is a carbon copy of the contract that I entered into to sell the

(Testimony of Jacob Morris Danziger.)

H. M. S. Petroleum Company the oil that might be produced from the Trinidad properties of the Trinidad International Petroleum Company.

Q. What is that attachment in the handwriting of Mr. Sutherland from England? What is that?

A. That is a suggested form of contract that he had evidently submitted to me; and my reply here is a remodeling in some form of that suggested contract.

Q. And you say to your best recollection you did [1428] exhibit that to Mr. Warren?

A. That is my best recollection.

Mr. Rose: I offer these documents, your Honor, as the defendants' exhibit next in order.

The Court: They are admitted.

The Clerk: Y.

(The documents referred to were marked Defendants' Exhibit Y, and were received in evidence.)

Q. By Mr. Rose: There has been some testimony here, Mr. Danziger, that you furnished certain material to Warren for salesmen's kits, I think is the way it has been described. Do you remember that testimony?

A. Yes, very vaguely.

Q. Did you furnish any material of any character to Mr. Warren to equip salesmen with kits?

A. No, not in that form. These documents that I have identified here, these photostat copies, and then this three or four page typewritten document of information, I gave to him. I don't consider

(Testimony of Jacob Morris Danziger.)

that that answers the qualifications of a salesman's kit, or anything of that character. I did give him that information in that form.

Q. Was there any discussion had between you and Mr. Carmen or DeHart respecting the modus operandi in their sales to be employed?

A. Not in the slightest. I had no interest in that.

Q. Was there any discussion as to whether they were to [1429] use any names other than their own?

A. No information of that character. They told me they were going to circularize their stockholders.

Q. So far as any communications that were to go forward up until the time you left for England, they were to be handled by whom?

A. By the Great Eastern Natural Gas Company.

Q. Was any arrangement made or any understanding had between you prior to your leaving for England—was there any discussion that Wake Development Company was to do anything?

A. Nothing more than to receive the proceeds that the contract provided for.

Q. The testimony here shows in certain exhibits that you received certain cables. Did you? I find these here chronologically, Exhibit K, which is a telegram bearing the purported signature of Joseph Dube, to Faulkner. Did that come into your possession?

A. It did at some time. I have seen it before.

Q. In any event, it wasn't originally transmitted to you, was it?

(Testimony of Jacob Morris Danziger.)

A. No. It is addressed to Miss Faulkner in care of Wake Development Company.

Q. I have here Exhibits L and M, which purport to appear as original cablegrams, bearing date November 9 and November 16; you received these while you were in London?

A. I received those in London at about the time they are dated.

Q. Had you any prior information, prior to receipt of these cablegrams, about the activities of this man referred to therein as Kramer, in his dealings with a Mrs. Pierce?

A. Nothing more than what he told me when I met him in New York with Mr. Carmen, that he had made a sale to somebody. I think that is the name.

Q. Then you received these advices set forth in Exhibits L and M while you were in London?

A. I did.

Q. What did you do?

A. I think I sent a cable that you have, or letter. I did something about it.

Q. You say I have a cable?

A. Well, that is my impression.

Q. Now, I wouldn't have a cable that you sent to somebody else.

A. There is a copy of some cable of mine that I have seen on the back of a cable, concerning that subject matter. [1431] Or it may be that I replied by letter. But I know I have seen a cable, another cable than those, that I wrote a reply on the back

(Testimony of Jacob Morris Danziger.)

of, and I think you also have some letters that I had communicated either to Mr. Carmen or the Commonwealth Trust Company or somebody.

Q. Well, tell us the ultimate thing. What did you do?

A. I cancelled the Great Eastern deal and notified the Commonwealth Trust Company that the escrow was cancelled, and they were not to make any more deliveries of it.

Q. What, in point of development, following that, took place to your best memory?

A. I got some letter from Mr. Carmen, that I think you have here.

Q. You refer now to Exhibit G, in evidence?

A. Yes; and I think there is another letter to Mrs. Faulkner on this same subject.

Q. I have the letter you refer to. That is Exhibit N, the letter addressed to "My dear Carmen"; is that the one you have in mind?

A. I think it is, Mr. Rose. What is the date of it?

Q. October 14th.

A. This is an acknowledgment of that. That is an acknowledgment of this letter. It refers to it. I sent this letter to Mr. Carmen. It is my letter. This is a carbon of it.

Mr. Lucas: What exhibit is that, Mr. Rose?

Mr. Rose: That is N, in evidence. The witness Carmen acknowledged receiving this letter, or the original of it.

Q. By Mr. Rose: After that, tell us what you

(Testimony of Jacob Morris Danziger.)

did after you arrived in Europe? Did you have anything to do with any sales that were going on during your absence in England?

A. No. Mr. Hill, secretary of the company, one of the owners of the company, who——

Q. No. I mean in respect to any of Mr. Warren's or his crew's sales of this Wake stock?

A. No, I had nothing to do with it. When I went to Europe I told them to do their business with the office, and gave them some written instructions as to just how to communicate with the office and continue their business there; and I didn't have anything to do with the details of it from then on.

Q. When you arrived in England, what went on there in connection with this Trinidad business?

A. Mr. Hill, one of the three owners of the property in Trinidad, the one with whom I dealt with in connection with the organization of the company, had told me that he had the finances of the company all arranged in England, and he elected himself as secretary of the company, and he took with him the stock books of the company, stock certificate books, and went over there, as he told me, to deliver some treasury stock of the company, that the company had authorized him to [1433] sell, for money to go into its treasury for the purpose of developing the Trinidad property. He had been over there quite some time, and I had finally gotten some reports out of him that indicated that he had made some sales, and none of

(Testimony of Jacob Morris Danziger.)

the money came to the company in Los Angeles. I was demanding it. And he had taken with him a Mr. Aronson——

Q. Who was Aronson, by the way? His name has come up here.

A. He is the same Mr. Aronson that Mr. Mainland interrogated me about as to being a mythical Mr. Aronson. But he is the man who introduced Mr. Hill to the Howe people who had me meet him and discuss the organization of the company that they wanted to organize down in Trinidad. Apparently Hill took him with him when he went to England to complete the financing of the company, and after a time, a considerable time, Mr. Aronson came back from England and he told me that Hill had been selling a lot of stock, but he had been delivering his own and putting the money in his pocket; and I couldn't get very much out of Mr. Hill as to what he was doing, and I was corresponding with Mr. Sutherland who knew him very well, because Mr. Sutherland had negotiated with Mr. Hill for the old English companies, which Mr. Sutherland headed, who acquired the property years before, and Mr. Sutherland told me he didn't think all was going very well. [1434] Anyway, I had the company give me authority, and it appears in their minute book, I have seen it since I have been here, to go over there and find out what Hill had been doing, and if necessary to prosecute him if he had done anything wrong. We had had a letter from some friend of Mr. Sutherland, to whom

(Testimony of Jacob Morris Danziger.)

he had sold some shares, that indicated he had delivered his own stock. The first thing I did when I got over there was to get in touch with Mr. Hill, to try and find out just what had happened. And I confirmed the fact that whatever sales he had made he had, instead of delivering treasury stock, he ostensibly sold treasury stock and he delivered his own, and the money went in his pocket, and he politely asked me what I was going to do about it. He had had a negotiation there with some brokerage house toward handling a large issue for the company, and Mr. Aronson had told me that, and told me who they were, and I saw them and I picked up the threads there, and with Mr. Sutherland's co-operation I worked along on a deal there for some considerable time. It had its offshoots and ramifications, but it finally resulted in the deal I made for company financing for the purpose of drilling five wells to cost \$75,000.00 with the Anglo something company. Its name I can give you from some correspondence, but it was Colonel Nicholson's company, and it is the deal I finally wound up just before I got on the boat and came back from London to the United States. [1435]

Q. There has been some mention made, I note here, I haven't had a chance to correllate some of this correspondence, but I notice there are some matters concerning a visit on your part to France while you were over there.

A. I think Mr. Sutherland had had some dealings for the company treasury stock with a man.

(Testimony of Jacob Morris Danziger.)

in Paris named Moreau. I remember going over to Paris and seeing him and discussing the situation with him.

Q. There has been mention made of a trip of yours to Sicily. What is that about?

A. Before I left the United States, and some time before I left Mr. Carmen, I had presented to me an oil concession in the Island Sicily, that I looked into pretty carefully and discussed the situation with a geologist named McColloch, who had been down there for about a year and a half examining the oil possibilities. A man named Pagliuchi had a concession, which I still have, and it was for about half the Island of Sicily. It embraced some fifteen different possible oil areas. I decided if I could get that thing financed, that I would put into the Trinidad Company some portion of that concession. When I was in England, after I had been there some months, I got myself down to Sicily, met Mr. Pagliuchi, went all over the island from one end to the other, spent five or six weeks, Mr. Pagliuchi furnished the car and I furnished all the expense, and I found that the most likely looking oil area was just [1436] outside of his concession, and I negotiated and spent some considerable time there to get added to his concession these areas that were very attractive, lying outside of his concession; then I went back to London to carry on these negotiations with the Nicholson people. Negotiations in Great Britain are not done like they are here. You meet on

(Testimony of Jacob Morris Danziger.)

Monday, and you spend half a day saying good morning, and then you make a date for the following Friday and get a few minutes. And those negotiations with Colonel Nicholson's company were—oh, they were protracted over a long, long time. While negotiating with him I called their attention to the fact that oil royalties in the United States were offering a profitable medium if they were properly bought; and they liked the idea sufficiently so that they made an arrangement with me whereby they set up an oil royalty investment trust and entered into a contract with me that I would buy their royalties for them in the United States on a profit basis to myself. And that transaction was completed and the company was organized. It was organized in the United States through my law office, the resignation of the directors was handed to them, they elected their British board and got quite some money together, and they said, "You go on home and do whatever is necessary to get in shape to buy these oil royalties, and within a few weeks we are going to furnish the Trinidad the \$75,000.00 we agreed to." And I got on a boat and I came on home. [1437]

Q. Let's stay in Europe for a moment.

A. All right, sir.

Q. I recall there has been some question raised here as to whether—when you left England for the United States did you have that actual agreement or, as Mr. Mainland indicated in his argument with

(Testimony of Jacob Morris Danziger.)

you at the time you discussed that subject, that it was merely a promise of an agreement?

A. It was an agreement where they agreed they would furnish the company \$75,000.00 to drill five wells. They were waiting, as all brokerage houses do—they don't put up their own money, they git it from a syndicate or customers—and they were dealing for another property in Trinidad to put in with it, and said that within a very few weeks that money would be forthcoming, and told me to get my organization together and get ready to drill, and for me to go on down there and do whatever might be necessary towards registering the company and so forth.

Q. Somewhere in this maze of documentary evidence there appears to be a report of the Trinidad International Petroleum Company holdings by E. H. Cunningham Craig, I won't bother about translating the various degrees that he has. If my memory serves me, a copy of this report went forward to, I believe it is Mrs. Parsons, or I may be in error; is that correct?

A. Yes, and to Mr. Carmen.

Q. Tell us what connection you had with this report [1438] and how it comes about and what part it has in this Trinidad deal?

A. When I got my first contact with the Anglo, whatever it is, 'Colonel Nicholson's firm, they said they would not consider any venture until they first had a geological report; they said they had employed E. H. Cunningham Craig to make a

(Testimony of Jacob Morris Danziger.)

report for them on the properties. They told me they were paying him a thousand pounds so to do. And the negotiations suspended until they got the report. And I had several conferences with Cunningham Craig during the period when he was assembling his report. They got the report and gave me a copy of it, which I sent to Los Angeles, and I am satisfied I sent it to Mr. Carmen and anybody else that I could send it to that had any interest in the property, because the report gave me more enthusiasm than I had had up to that time concerning these properties.

Q. Who was this E. H. Cunningham Craig?

A. He is recognized in England as a leading geologist in England, particularly for this Trinidad. He had been—well, I guess, government geologist. He lived in Trinidad for a great many years, and he had been the government geologist in that area, and he knew Trinidad and Trinidad lands and Trinidad oil possibilities probably better than any other geologist, and he told me during one of my conferences with him that he was the fellow that located this well that was on the property that Mr. Sutherland's old English company [1439] drilled many, many years before.

Mr. Rose: Has your Honor had occasion to read this, or shall I introduce it as a separate document?

The Court: I read the one in evidence.

Mr. Rose: I think it is attached to a letter to Mrs. Parsons, or somebody.

(Testimony of Jacob Morris Danziger.)

The Court: I have read it.

Q. By Mr. Rose: Let's clear up the business in general. How much did Wake Development Company, during your sojourn in Europe, during that approximately two-year period, how much did it receive in gross from any of this Great Eastern transaction? I have in mind by "Great Eastern transaction" Mr. Warren and his associates?

A. My best recollection is around between five and six thousand dollars.

Q. During that two-year interval?

A. Yes.

Q. To your recollection how much was grossed by Wake Development Company from the inception of the sales, starting in New York before your departure to Europe, up to the last sale?

A. In 1940, the last sale was made in 1940. To my recollection, around \$10,000.00.

Q. Your best recollection is——

A. Around \$10,000.00, yes.

Q. I think we might as well pick up with your return [1440] from Europe. You returned from Europe when? A. In July 1937.

Q. And upon your return did you see Mr. Warren? A. I did.

Q. Where did you see him?

A. In New York at my hotel.

Q. In relation to your return, when was it you saw him?

A. Within a day or so of my return.

Q. Will you tell us, you being a lawyer I will

(Testimony of Jacob Morris Danziger.)

ask you to lay the foundational facts without my taking time to develop them, tell us the approximate date you know, who was there and so forth?

A. I had written to Mr. Carmen and told him I had to arrive at a certain day, and I thought I would go to the Barbizon Plaza, but if I didn't I would get a note there for him; and I arrived there I think it was around the 20th of September, I remember I took a slow boat; I think I left over there on the 12th, that is my best recollection on dates, and within a day or so I heard from him, he either phoned me or came, and I saw him twice, possibly three times; but either on the first occasion or on the second he brought a man that he introduced to me as Mr. Arthur Winslow. Mr. Carmen told me that he had been into some difficulties in Chicago, he had been convicted, his case was pending on appeal. I remember him showing me the brief and I made some [1441] comment on it. And he told me that he wasn't going to have anything further to do with the Great Eastern deal, and that Mr. Winslow would be the man who was taking over. And Mr. Winslow, seemingly, confirmed that.

Q. The name Winslow has come into this hearing here on a number of occasions. It may not be amiss to give us a description of that gentleman.

A. The only way I can describe him is to compare him with Mr. Carmen. He was a little fellow, and I call Mr. Carmen a big fellow. And beyond that I can't describe him. Well, I think I met

(Testimony of Jacob Morris Danziger.)

him twice, because he carried on some negotiations with me to buy some stock flat. I mean by that at a fixed price.

Q. Tell us when you met Mr. Winslow was Mr. Warren present?

A. Mr. Carmen brought him in and introduced him to me.

Q. Tell us what was said? Let's clear that up as well as we can. Tell us what was discussed at this time, outside of the introduction?

A. Mr. Carmen or Mr. Winslow, either one, told me that Winslow had some kind of a deal on that he wanted to buy some of the Trinidad stock at a price better than the arrangement with the Great Eastern Company. I agreed with him to sell him, I forget the number of shares, but I remember the price was very considerably less. [1442]

Q. What was it? Do you have any recollection of that?

A. No, I don't know. I could take some figures and put it together. But he came back subsequently; he didn't tell me that he had made a deal, he didn't tell me who he was dealing with, but he came back subsequently with a check from Mrs. Parsons, and it was \$7,000.00 or \$6,000.00, the check we speak of here, it was \$7,000.00 made to him, and then wanted, and I put in the way of delivery to him, because the stock was issued to him and receipted for by him, whatever number of shares he had bargained for. He gave me the check, I sent it out to California, and my best

(Testimony of Jacob Morris Danziger.)

recollection is that I waited there until the check cleared, and then I gave him either a bank draft or some form of check or draft, because I would have remembered if I handled it in cash, I never handled that large a sum of cash, I gave him some form of bank draft that had been sent on to me from Los Angeles for the balance of the \$7,000.00 check over and above—my impression is that it was a thousand dollars that the Wake Development Company was getting out of that transaction we had negotiated, and I delivered him the stock. It was sent on to California, it was in his name.

Q. The name of whom?

A. Arthur Winslow, and some of that stock, or all of it, is in the records here, because it came in for a transfer at some time. It has got Mr. Winslow's name on the back of it. I think I have seen it since we have been in this court [1443] room.

Q. Mr. Warren testified here that there was some kind of a deal between you, Warren, I think Mr. Shaffer and a Mr. Robbins, if my memory serves me. Did you ever meet or know of a Mr. Robbins?

A. I never heard of the name—Robbins, I heard that name in the court room here. The other name I never heard until I heard it in the court room. And I had no dealing with anybody excepting Mr. Winslow, and my best recollection is that when Winslow was negotiating, Carmen didn't come there; that Winslow came the second day and he came by himself.

(Testimony of Jacob Morris Danziger.)

Q. Did you have any idea that these people had cooked up a deal of any kind with Mrs. Parsons culminating into the being of this \$7,000.00 check? [1444]

A. No. When Mr. Winslow brought the check to me, it was Mrs. Parsons' check, I imagined he had done some business with Mrs. Parsons.

Q. Did you after your return from England have any discussion at all about a proposed sale to Mrs. Parsons?

A. No, that wasn't mentioned to me at all. He simply said he had a deal and he was going to buy some stock flat for his own account.

Q. But you did come to some knowledge that there had been a transaction had?

A. Yes, when Mr. Winslow finally came in with the check it was Mrs. Parsons' check.

Q. Other than that did you participate in any plan or discussion with Mr. Carmen or anybody else respecting the sale to Mrs. Parsons of Wake Company's stock in Trinidad?

A. At that time, no.

Q. Before your return from London was there any matter that came to your attention about a proposed sale to Mrs. Parsons?

A. There was some correspondence that indicated that she was a stockholder. I remember writing her some letter. She seemed to be disturbed about her stock. I think that letter carrying that Cunningham Craig report on it was something to

(Testimony of Jacob Morris Danziger.)

do with it. I think I have seen those letters in evidence here.

Q. There has been some letter here, without taking the [1445] time to single it out of this mass of data, which reflects that there was some sort of arrangement made for you to call upon Mrs. Parsons on your return from England?

A. I never did call, have never been asked to call, and I think I know what you refer to; something in one of my letters to Mr. Carmen where I said I would help with Mrs. Parsons, or to whoever it was that was handling the thing at that time. What I probably had in mind was——

Q. No, let's stay away from probabilities. You mentioned this man Winslow. I have removed from Exhibit No. 73 Certificate No. 236 for Trinidad International Petroleum Limited stock made to Arthur Winslow, and bearing a transfer endorsement with the name Arthur Winslow; is this Arthur Winslow whose name appears on that certificate, executed on the 25th day of July, 1937, the Winslow that you have told us was introduced to you by Mr. Warren? A. It is.

Q. Was there any discussion had between you and Warren respecting the subject of whether he was in any manner going to sell any Trinidad or Wake stock from that point on?

A. He told me that he was turning the deal over to Mr. Winslow in behalf of the Great Eastern people, and that he wasn't going to have anything more to do with it.

(Testimony of Jacob Morris Danziger.)

Q. To your knowledge did Mr. Warren make any sale of any character or description of Wake owned Trinidad or Trinidad stock after your return from England? [1446]

A. To the best of my knowledge he never did.

Q. Did you at any time have any knowledge or information, or know that the person who has appeared in this proceeding and has stated his true name as being Warren, ever used the name of George Carlton?

A. I have never heard that he did. I never knew that he did.

Q. Did you ever know that he had assertedly resorted to or used the name of A. L. Roberts?

A. I never did until I heard him say so in the court room.

Q. Did you ever at any time know that he had resorted to utilizing the name of W. E. Edwards?

A. I did not until I heard him say so in the court room.

Q. Did you ever know that he had on any occasion resorted to representing himself as a person named George Williams?

A. I don't think I have ever heard him say that, even in the court room; but I never knew it before, at least.

Q. Did you ever know or have any knowledge at any time that he had represented himself to anyone as a person bearing the name George Wilson?

A. I never did.

Q. Did you at any time have any knowledge or

(Testimony of Jacob Morris Danziger.)

information that the said Warren had represented himself to any person or [1447] anyone as a person bearing the name of George Dawson?

A. I never did.

Q. Did you at any time have any knowledge or know that said Warren had represented himself to any person at any time as being an individual named A. L. Baker?

A. I never did.

Q. Did you ever know or have any information or knowledge that the said Warren had resorted to or utilized in any transaction, or to any person, or represent himself as a person bearing the name of George Carver?

A. No, I never did.

Q. Let's see if I missed any that he has testified to. I think he mentioned some other name, your Honor, that came like a bolt from the blue that isn't even mentioned.

The Court: What is the other name beginning with a C, Mr. Lucas?

Mr. Lucas: Cameron.

Mr. Rose: Yes, Cameron.

Q. By Mr. Rose: Did you ever have any knowledge that Mr. Warren had ever resorted or presented to any person, or held himself out to be a man named Cameron?

A. I never did.

The Court: What was the other name beginning with C, Mr. Lucas, to whom money was sent?

Mr. Rose: That is Carlton, your Honor. That is covered in the indictment, the name Carlton.

The Court: Did you ask him about that?

Mr. Rose: Yes, your Honor.

(Testimony of Jacob Morris Danziger.)

Q. By Mr. Rose: Do you know if he ever used the name Cameron?

A. I never did.

Q. Mr. Warren here in this testimony on examination in chief has testified——

Mr. Rose: Am I in error about this, Mr. Lucas? The first transaction that you interrogated him about that has touched upon in the indictment was the Florence Lawyer transaction? Am I correct in that?

Mr. Lucas: No. I think we talked on the Parsons transaction, it being the first one. I think I followed it in chronological sequence in the indictment.

Mr. Rose: You mean the original Parsons transaction?

Mr. Lucas: Count 1 in the indictment is the one I started Carter on, and I followed it right through. [1449]

Mr. Rose: I take very few notes. I don't even find a reference to that. Does that correspond with your Honor's recollection, that the first transaction we are talking about, other than this transaction upon his return from England was Parsons?

That couldn't possibly be a subject of a count in the indictment in '37. Are you talking about that transaction?

Mr. Lucas: If I understood you correctly, you asked me what transaction I questioned Mr. Carter about first.

Mr. Rose: We do come to a transaction, of

(Testimony of Jacob Morris Danziger.)

course, with Mrs. Parsons in 1940. I don't know how you could have taken that up first in order. If you are talking about your inquiry about the Parsons transaction culminating in the \$7,000.00 check that is in evidence, of course, you have in mind that is not a count in this indictment?

Mr. Lucas: That's right.

Mr. Rose: Does your Honor's recollection correspond that the first transaction—he did go into the '37 transaction with Parsons, over my objection, which your Honor will remember I claimed could not be an issue in this indictment because it was obviously a transaction too antecedent to the time of the filing of this indictment to become an issuable transaction, except insofar as it affects the relations with the parties and so forth.

The Court: I can't help you out, Mr. Rose. I don't recall what you are inquiring about. [1450]

Mr. Rose: In any event, I feel that I have covered the '37 transaction regarding Mrs. Parsons, in my examination of this witness.

Q. By Mr. Rose: Now, there has been some testimony here on the part of the witness Warren that he had a transaction with a Mrs. Florence Lawyer, to whom he represented himself as a representative of the Sterling Securities Company, in which he claims he resorted to the use of the name Roberts, and also sent a man, subsequently, to see her named Callahan. Firstly, did you ever know or have any knowledge that Warren had ever rep-

(Testimony of Jacob Morris Danziger.)

resented himself as a representative of the Sterling Securities Company?

A. I never heard that name until it got into this case here.

Q. Did you ever discuss with Warren, as distinguished from any other person, the disposition on the part of the Wake Development Corporation to accept any of these groups of Canadian stocks mentioned in this indictment as part of the purchase price of any shares of stock?

A. Not with Mr. Carmen.

Q. Well, I would prefer that you answer that question by his true name so that will cover the identity of the individual.

A. Not with Mr. Warren.

Q. All right. With whom, if anyone, did you discuss the subject of the Canadian stockholders, that is, any list [1451] of Canadian stockholders?

A. I don't know what you mean by Canadian stockholders, Mr. Rose.

Q. Well, in the course of this testimony here, and documents, there are some Canadian mining companies.

A. I didn't know they were Canadian. There have been two mining companies, Golden Quebec and something, I don't remember the other name. Is that what you mean?

Q. Yes. Wait until I get this out of the indictment here, and then I will address your testimony specifically to the firms mentioned here. Here it is. Have you any knowledge of the corporate

(Testimony of Jacob Morris Danziger.)

structure of a firm known as Golden Quebec Mines, Limited?

A. Well, I know there is such a company.

Q. Have you any knowledge of the corporate structure or the personnel connected with the firm known as the South McKenzie Island Mines, Limited?

A. I know there is such a company. That is all I know about it.

Q. Did you at any time have occasion to discuss with any person the shares of stock in any quantity whatsoever of the companies that I mentioned, named the Golden Quebec Mines, Limited, and South McKenzie Island Mines, Limited?

A. Yes, with Mr. Winslow.

Q. Tell us where and when and under what circumstances this subject of a disposition on the part of Wake Company, [1452] in connection with potential sales of its Trinidad stock, in any transaction involving any of these mining companies came up?

A. In September '37, when I met Mr. Winslow, on the only occasion that I met him, I mean it was a period of two or three days, I might have met him over that period, he told me he had——

Q. Let's clear up that date?

A. I left London on the 12th of September, and I probably got to New York about the 20th.

Q. That is why I would like you to have your passport.

A. I will bring it to you.

Q. I can't lead or suggest something to you,

(Testimony of Jacob Morris Danziger.)

but I would like you to give some attention to that date, because you are speaking of leaving London in September, 1937.

A. No. It was in July. I beg your pardon. It was just the other way. I left here in September. July 12th, London or Southampton. I got here about the 20th, and within a very few days of that is the time I met Mr. Winslow and the only times that I met him.

Q. And it was with Mr. Winslow that you discussed this Canadian business? A. It was.

Q. Tell us about that.

A. Mr. Winslow asked me if he might have some Wake stock on the basis that he was purchasing some from me flat [1453] for some stockholders of the—naming those two mining companies, and I told him that he might.

Q. Was that subject of disposition on the part of Wake Development Company to sell its shares of Trinidad stock in any deals involving the taking in of any mining company stock ever discussed with Mr. Warren? A. No, sir.

Q. Did you have any knowledge whatsoever of what representations had been made by Mr. Warren or his confederate, he is named as Callahan, in his transactions with the lady known as Florence Lawyer?

A. I never heard the name Callahan until I saw it in the indictment. No one ever told me that either he or Mr.—well, no one ever told me

(Testimony of Jacob Morris Danziger.)

who was negotiating the transaction with Mrs. Lawyer, whether it was Mr. Carlton at that time or not, I don't know. But I can get my file and tell you in a hurry.

Q. You have heard Mr. Warren's testimony as to the representations that he made in his initial negotiations with this lady, Florence Lawyer; you heard that here in court?

A. Well, I may have, but I don't remember what it was, Mr. Rose. I listened to what was going on here, but I didn't take it into my mind. I don't know now what it was.

Q. Did you ever authorize Mr. Warren, or any other person whatsoever, to tell any person anywhere at any place [1454] that the shares of stock of the Trinidad International Petroleum Company had ever been on the London stock exchange?

A. I never did to anyone.

Q. Or on any other exchange?

A. I never did.

Q. Did you ever authorize Mr. Warren or any person whomsoever to represent to any person anywhere at any time or any occasion that the Trinidad International Petroleum stock was listed on any exchange in Canada, the United States or elsewhere? A. I never did.

Q. Incidentally, did you ever send Mr. Warren any papers from England containing the Trinidad stock quotations?

A. To the best of my recollection, I never did.

Q. Did you ever suggest to Mr. Warren, in any

(Testimony of Jacob Morris Danziger.)

manner, that he might know how to use such paper? A. I never did.

Q. Did you have any knowledge at any time, from your connection and association with the Trinidad company or the Wake company, from its inception, up to the time that you went on trial, that any person or persons calling on any of the persons who communicated with either Trinidad company or Wake company concerning its securities was representing himself under any name other than his own? A. I had no such knowledge.

Q. In the course of your connection with the corporate [1455] defendants, the name of A. L. Roberts has been mentioned here. Did that name come to your attention in any manner? A. It did.

Q. Can you tell us in what manner that name came to your attention?

A. Dr. Hazelton had some of the stock sent in for transfer to Mr. Roberts. And it was done. I think I signed the certificates.

Q. At the time that this transaction was had, did you have any knowledge as to the true identity of A. L. Roberts? A. I did not.

Q. Did you at that time entertain any idea that Warren, or Carter, or Carmen, was resorting to the use of the name of A. L. Roberts, or Roberts in any form or manner? A. I did not.

Q. From the time of your connection with the corporate defendants who are now on trial, the Wake company and the Trinidad Company, up to the time you went on trial, did you have any knowl-

(Testimony of Jacob Morris Danziger.)

edge that any person under any name had approached any person anywhere and offered to repurchase preferential notes or shares of stock if these people were to exercise their rights in getting them?

A. Well, you'd better repeat that question, Mr. Rose, as to time.

The Court: Do you expect to be able to complete your [1456] direct examination this afternoon?

Mr. Rose: I haven't touched upon these various transactions, your Honor. I don't think so.

The Court: It is past 4:30, if you would like to adjourn.

Mr. Rose Yes.

(Whereupon, at 4:35 o'clock p.m., Thursday, February 1st, 1945, an adjournment was taken until 10:00 o'clock a.m., Friday, February 2, 1945.)

Los Angeles, California,

Friday, February 2, 1945, 10:00 A. M.

The Clerk: United States vs. Danziger, et al.

JACOB MORRIS DANZIGER,

called as a witness by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

(Testimony of Jacob Morris Danziger.)

Direct Examination (Resumed)

Mr. Rose: Have you got the last question, Mr. Reporter? My impression is it was left unanswered.

(The last question was read as follows:

“From the time of your connection with the corporate defendants who are now on trial, the Wake Company and the Trinidad Company, up to the time you went on trial, did you have any knowledge that any person under any name had approached any person anywhere and offered to re-purchase preferential notes or shares of stock if these people were to exercise their rights in getting them?”)

The Witness: My impression is that I did have concerning Mr. McCoy who had written in to the office telling of some such situation; and I am not sure, but I think Mr. Russell. But the file will show more carefully.

Q. By Mr. Rose: When these advices came to you, what did you do, if anything, about it?

A. The first thing I did in Mr. McCoy's case was to [1459] write him on the subject and have him give me the fullest detail that he could; and I wrote to Carlton and told him what Mr. McCoy had said, or possibly sent him a copy of the letter, to try to find out what he could, what some of his men might be doing.

Q. Did you at any time in behalf of yourself or these companies authorize any such representation?

(Testimony of Jacob Morris Danziger.)

A. We never did, and we repudiated them at every opportunity.

Q. Would you have permitted any of the persons connected with Trinidad Company or the Wake Company to have gone through the sale, having any knowledge that any such representations had been made?

A. We never would have, and I think there were some instances where we refused to make a sale where there was any indication of a promise. I think in that Lawyer case something had been said to Mrs. Lawyer that she wrote in, that indicated they were promising her a quick profit or a repurchase, or something of that character, and I remember very distinctly, it is in the file here, telling her that we wouldn't let her have the stock under those conditions.

Q. That brings to my mind that in the testimony of Mr. Warren he stated, in effect, that in each instance where the letter has in it something reflecting reluctance, seemingly, on the part of Wake Development Company to make the sale, that he suggested that as a build-up or had some participation in [1460] the preparation of such proposed letter; is that true? A. He did not have.

Q. That, in turn, brings to mind, Mr. Danziger, some letter, I can't identify it by number at the moment, but you will remember Mr. Lucas in his argument, I think, read from that letter, in which the letter, in substance or effect, proposes to state, in reply to an offer to purchase the Trinidad shares

(Testimony of Jacob Morris Danziger.)

of stock, that you or the company would consider, and you seemed to manifest a reluctance to make the sale. Do you have that in mind?

A. I have in mind that we frequently didn't want to make a sale when the situation in England was such that the drilling of some wells was imminent.

Q. Was there, in fact, from time to time, during the course of years, such situation?

A. There was continuously from early in 1935 right up to—well, I would say even last year, and you will find it in the correspondence.

Mr. Rose: You haven't seen this yet. I will have you look at it, Mr. Lucas.

Q. By Mr. Rose: I have exhibited to counsel a document on the letter-head of the R. W. J. Sutherland & Company, under date of January 17, 1939, from London; I will ask you to read that document and state how that came into your possession.

A. This letter was mailed to me by Mr. Sutherland at [1461] or about the date it bears; had attached to it this yellow three or four page letter.

Q. On this yellow part of this letter there is some handwriting at the bottom addressed to you. In whose handwriting is that.

A. That is Mr. Sutherland's.

Mr. Rose: I offer this document, your Honor, as defendant's next in order.

The Court: Admitted.

The Clerk: Z.

(The document referred to was marked as

(Testimony of Jacob Morris Danziger.)

Defendants' Exhibit Z and was received in evidence.)

Mr. Rose: I thought it might be a good idea if your Honor would read that letter, because I wanted to advert to some of the things that are set up in that communication.

Q. By Mr. Rose: I have exhibited a communication from England bearing date of June 21, 1933, touching in part on the quality of oil. I will ask you where did you receive that communication and from whom?

A. I received this in New York from Mr. Sutherland about the time that it was written, addressed to me and signed by him.

Mr. Rose: I offer this in evidence as defendants' next in order.

The Court: Admitted.

The Clerk: AA. [1462]

(The document referred to was marked as Defendants' Exhibit AA, as was received in evidence.)

Q. By Mr. Rose: In connection with the subject of proposed drilling of wells on these properties, what steps had you taken and on what occasion, looking to that objective?

A. Before I went to England I had arranged with Mr. Joe Coughlan to take charge of the actual drilling in Trinidad, and had him make preliminary inquiries, which he reported to me by letter, as to costs of material, availability of la-

(Testimony of Jacob Morris Danziger.)

bor, and other items that are covered in the letter I gave you a moment ago, Mr. Rose.

Q. You have handed me a document. We know the document speaks for itself from a legal point, but will you identify it?

A. This is the report from Mr. Coughlan that I am speaking of. This is a title report from Mr. Andrews there (indicating).

Q. What is this?

A. That is a schedule of the 200 leases that make up the Trinidad properties, and Mr. Andrews refers to them there in his report of the titles. This other document is the report from Mr. Coughlan, as I said, employed to go down and do the drilling.

Mr. Rose: I offer the document of September 18, 1935, which commences with the words "Dictated by Joe Coughlan," as defendants' next in order. [1463]

The Court: Admitted.

The Clerk: BB.

(The document referred to was marked as Defendants' Exhibit BB, and was received in evidence.)

Mr. Rose: I offer the document or documents which have been identified as a title report, as defendants' next in order.

The Court: Admitted.

The Clerk: CC.

(The document referred to was marked as

(Testimony of Jacob Morris Danziger.)

Defendants' Exhibit CC, and was received in evidence.)

Q. By Mr. Rose: Now, there has been some mention made in the course of the testimony here, on the part of the witness Warren, to the effect that you and he discussed or devised some formula in the nature of one or two codes. Do you recall that testimony?

A. Well, I heard him say something about codes. I don't remember the details of just what he said.

Q. Did you at any time discuss with him the utilization of any code whatsoever?

A. No. That code that appears on some of these letters is something that he and Mrs. Faulkner worked out between them after I went to Europe.

Q. You notice that these codes are in a certain handwriting on certain exhibits?

A. Yes, they are all in my sister's handwriting on [1464] our papers. None of them are mine.

Q. Did you at any time discuss with him the use of a code in any manner or form?

A. No, no, not to my knowledge.

Q. There has been some mention made of a letter purported to have been signed by Dr. Padelford; do you remember that?

A. Yes, I do, very well.

Q. Who is Dr. Padelford, incidentally?

A. Dr. Padelford is a director in the Trinidad Company. He had formerly been general superintendent in our Mexican properties, and when I

(Testimony of Jacob Morris Danziger.)

organized the Trinidad Company he agreed to become a director and take charge of the overall development of our properties if and when we got ready to drill.

Q. What is his experience, to your knowledge?

A. Well, he had been for some thirty years the general superintendent in the development of all of the Mexican Petroleum Company properties in Mexico.

Q. Have you any knowledge of Dr. Padelford ever sending any communication to Warren or to any person?

A. I never did. He has never had any contact with him whatever. He had nothing to do with that letter, and never signed any such letter, and I never sent any such letter to Mr. Carmen, as he testified. Never heard of it until we got into the court room. [1465]

Q. Did you have any knowledge of the representations made by Warren, or any of his confederates, in the transaction related and testified to by him, in the sale to the person called Pitts?

A. No, I never had any knowledge of any of the details of the transaction with Mr. Pitts beyond what is in our correspondence.

Q. He testified concerning a transaction with one F. A. Russell. Did you have any knowledge or information respecting and concerning the representations made by him or any persons acting with him, or any person who, in fact, called on F. A. Russell?

(Testimony of Jacob Morris Danziger.)

A. I never had any knowledge of it.

Q. Did you have any knowledge or information respecting the representations or the manner in which the sale had been negotiated with the lady called Adeline Skinner?

A. I had no knowledge of it.

Q. Did you know that a Mike O'Brien, I think, had been sent to her, or did you ever hear of a Mike O'Brien?

A. No, I never heard that name; but I heard it here in the court room.

Q. Did you know what representations he had made? A. I knew of nothing.

Q. In the transaction testified to by Mr. Warren with one E. Barrie Smith of Hartford, Connecticut, did you have any knowledge or information respecting the representations, [1466] the declarations that had been made preliminary to the Wake Company hearing from E. Barrie Smith?

A. I had no knowledge of it whatever.

Q. Did you know who had called on E. Barrie Smith? A. No.

Q. What about Adeline Skinner?

A. The same holds true with all of them. I didn't know who called on any of these people.

Q. Did you have any knowledge or information concerning and respecting the representations that had been made by the person or persons who called on the individual identified in this case as Michael Burns of Peekskill, New York?

(Testimony of Jacob Morris Danziger.)

A. I didn't know who called, and I don't know what anybody said to him.

Q. Now, we come to Dr. J. Arthur Hazelton. Did you have any knowledge or information respecting the representations or declarations made by the persons who called on Dr. J. Arthur Hazelton, respecting the several transactions had with him?

A. No, I didn't have at the time. I don't know whether Dr. Hazelton ever wrote in afterwards and told us what had happened, or not. I would have to look at the file. But I knew nothing about who called on him or what representations were made to him.

Q. That brings us directly to the subject of Exhibit 34 in evidence. I now hand to you a letter bearing date [1467] March 14, 1940, in pen and ink, composed of some three sheets, and attached to it is an envelope addressed to Dr. J. Arthur Hazelton, Mantua, New Jersey; I will ask you to look at this document and state whether you ever saw such document?

A. I never saw it until I saw it here in the court room, Mr. Rose.

Q. Did you ever have any participation whatsoever in the transmittal of this document, or the letter or envelope, to Dr. Hazelton?

A. I did not.

Q. Did you ever know that such document purportedly had been sent out here to Los Angeles for mailing?

(Testimony of Jacob Morris Danziger.)

A. Not until I heard of it in the court room. I don't think this is one of the things that Mr. Mainland told me about; but he told me of some of the things that had been done. But I don't believe this was among them.

Q. Did Warren, or by any other name, or by his own name, ever inform you that he was having a transaction with Dr. J. Arthar Hazelton under the name of Roberts? A. No.

Q. Did he tell you that he was negotiating with him under the name of Roberts?

A. He never did.

Q. Did you ever hear of Roberts?

A. Yes. Dr. Hazelton sent in to have some stock transferred to Mr. Roberts, some of his own stock, to be split [1468] up in Mr. Roberts' name. And I think ultimately sent them in again for re-transfer to himself. That is the only time I ever heard of the name Roberts, until I got into the court room. [1469]

Q. So far as your knowledge or belief goes, did you have any intimation that Roberts was anyone other than Roberts? A. I had none.

Q. Did you have any knowledge that Dr. Hazelton had sent four money orders, I believe, to an individual under the name of Roberts?

A. I never heard anything about it.

Q. That brings me——

The Court: What was that question and answer?

Mr. Rose: I asked him about the four money orders, your Honor will remember, in evidence, that

(Testimony of Jacob Morris Danziger.)

were transmitted to a person named Roberts, and bear the endorsement of Roberts in New York, from —Dr. Hazelton sent them from New Jersey. Does your Honor remember that? Let me call your Honor's attention to it. Where is that exhibit with the money orders attached to it?

The Court: I remember it now. I thought you were talking about money orders from Los Angeles.

Mr. Rose: I haven't come to that. I have a note here that Dr. Hazelton sent four postal money orders from New Jersey to New York.

The Court: I remember now.

Mr. Rose: Does your Honor have that in mind? I think they are the four bottom ones of this exhibit here, No. 17. Incidentally, your Honor, so we will be clear on that, these [1470] others that your Honor has in mind, the six money orders that went from here to Carlton, I don't think has any relationship to the Hazelton transaction.

Mr. Frankenburger, if you can help me, can you give me that check for \$300.00 made to Roberts?

Q. By Mr. Rose: I show you Exhibit No. 29, which is a check dated March 5, 1940, a cashier's check, issued from the Farmers National Bank of Mullica Hill, New Jersey, made payable to A. L. Roberts, and direct your attention to the endorsement thereon, and I will ask you if you know whose handwriting is on there, the endorsement "A. L. Roberts?"

A. I don't.

Q. Incidentally, while I have that Exhibit No.

(Testimony of Jacob Morris Danziger.)

17, there is a photostat here of a group of—I think it is six money orders. Take a look at it. Those bottom ones are from Hazelton to Carlton in New York.

A. I have looked them all over, if that is what you wanted me to do, Mr. Rose.

Q. Did you cause to be transmitted to George Carlton, the person to whom these several money orders are payable, as shown by Exhibit 17, the amounts reflected in these respective six U. S. Postal money orders emanating from Los Angeles as reflected by Exhibit 17?

A. Well, I can't tell from them, Mr. Rose. I can't tell from those. I did send him some money orders transmitted in the name of "A. Levy," my brother-in-law, and I [1471] don't know whether these are the orders that fit into them or not. There is nothing on them that gives me that cue.

Q. There is a collateral document to this.

Mr. Rose: Do you have it, Mr. Frankenburg?

Mr. Lucas: Exhibit 16, I think, is what you want.

Q. By Mr. Rose: We have here as Exhibit 16 certain applications, and I will ask you to examine that and state whether those are in your handwriting?

A. Yes, sir, they are all in my handwriting.

Q. At the time that you made and caused to be made these respective applications for transmittal of money, as reflected in Exhibit 16, did you have any knowledge that the persons to whom these

(Testimony of Jacob Morris Danziger.)

transmittals were to go, was the person who appeared in these proceedings as Mr. Warren?

A. No, I didn't know that Mr. Carlton was Mr. Warren, or vice versa.

Q. So far as you knew, was there a George Carlton, as distinguished from the gentleman here under the name of Warren, Carter, Carmen, et cetera?

A. There was; and I had considerable correspondence with him.

Q. That brings to mind—what was the occasion, Mr. Danziger, for the resort to the use of the name of your brother-in-law as distinguished from any other?

A. Mr. Carlton had said in sending him some money he didn't wish it to come from the Wake Development Company, and [1472] I sent it in this form to meet that view.

Q. Did you have any intention in causing the money to go through the postal process under the name of your brother-in-law as distinguished from any other? Did you utilize that for the purpose, or with any belief that you were defrauding anyone?

A. No; and I don't know how it did defraud anyone.

Q. Now, we come to Mr. McCoy. Do you remember Mr. McCoy being here?

A. Yes, very well, Mr. Rose.

Q. Now, in connection with the transaction with Mr. McCoy, other than as reflected by the file that is an exhibit in this case, of the Wake Development

(Testimony of Jacob Morris Danziger.)

Company, did you have any knowledge of the identity of the person or persons who called on Mr. McCoy?

A. Well, I have acquired some knowledge from some proceedings here, and from some thing that Mr. Mainland told me.

Q. Well, I haven't got that in mind. I am relegating this inquest to the times surrounding the occasion of the transaction.

A. I had no knowledge of who had seen him, other than what he told me.

Q. Did you know what representations had been made to Mr. McCoy by the person or persons calling on him?

A. Not until Mr. McCoy wrote me and told me something about it. [1473]

Q. Had you at any time authorized such representations to be made? A. I had not.

Q. Prior to these advices being transmitted to you in the course of mail from Mr. McCoy, as established here by his oral testimony and by the documents now in evidence, did you have any knowledge of what representations had been made?

A. I had not.

Q. Did you know that a Mr. O'Brien, at least that is the testimony here, that a Mr. O'Brien had called on him?

A. I never heard the name of Mr. O'Brien until I got in this court room in connection with any of these affairs, Mr. Rose.

Q. Did you know who the person referred to in

(Testimony of Jacob Morris Danziger.)

this transaction, who has been identified here as A. L. Baker, was?

A. I didn't know it at that time.

Q. I think Mr. McCoy mentioned that a Mr. Winslow was supposed to be the person located here in Los Angeles who was in on this supposed deal. To your knowledge was Mr. Winslow ever out here?

A. I never knew him to be here, and I never met him here. I met him but the once, on two occasions practically at the same time, when I returned from Europe. I never knew him at any time to be here.

Q. So far as you knew, at all times, other than such information that has been conveyed here in the course of the testimony, what connection did you understand Mr. Winslow to have, if any?

A. Mr. Winslow told me, and Mr. Carmen told me, that Mr. Winslow was taking over the Great Eastern deal in, I think it was in September, 1937, when I returned to New York, on the occasion that I met the man.

Q. That gives me an opportunity for once to clear up these dates. I see your passport here. You just told us you returned in September 1937. Let's get the dates when you left for England, and let's get when you returned, so we will have it definitely in the record.

A. This passport won't show when I left for England, but it shows when I got to Southampton.

Q. What is that date?

A. September 19, 1935.

(Testimony of Jacob Morris Danziger.)

Q. Tell us when the passport reflects your return?

A. It reflects my arrival on the City of Norfolk, that is the name of the ship, July 22, 1937.

Q. Where at?

A. Well, it just says U. S. Immigration Department of Labor. I know where it was but I don't think this reflects it. The ship landed at Baltimore.

This British alien registration thing says that I left Southampton for the United States on the 12th day of the 7th [1475] month. That is July 12, 1937.

Q. So far as you know, the records reflected in that passport and document are accurate?

A. They are accurate and my memory is not.

Q. I do not want to burden his Honor with the detail of taking out all these communications. You are familiar, in general, are you, with the various documents that have found their way into evidence here in the course of these proceedings that bear your signature?

A. Yes, I am. I have seen them all, and I gave them all to Mr. Mainland, I think.

Q. Now, at the time that those respective documents, and each of them—if there is any exception, I want you to specify it if you have any in mind—at the time these communications were caused to be written and transcribed and that matter transmitted, were any of the declarations or statements made by you in any of those documents, over your signature, made with any reservation or with any purpose of deception, or with the intention of misleading the

(Testimony of Jacob Morris Danziger.)

person to whom it was addressed or by whom it was received?

A. They were not; and I think every statement that I have ever put my name to was fully true and correct.

Q. You have read this indictment, haven't you?

A. No, I can't say that I read it all, Mr. Rose. I scanned it at one time.

Q. It is a little embarrassing to me, because I wanted [1476] to follow the form of addressing——

A. I will read it if you wish me to.

Mr. Rose: I wish to apologize to your Honor. There has been a maze of documents here that have been transmitted to me, and your Honor is familiar with the difficulties, as you indicated, of a man in private practice. Frankly, I was injected into this trial with no belief, honestly, in my mind, that I was going to go ahead as fast as I have been obliged to, and I find a lot of communications, which I think are vital and significant, which should properly be fore this court in consideration of this matter. As your Honor knows, in private practice I have a deadline on briefs, and I have records to read. And as your Honor probably surmizes, I am a pretty busy lawyer, you might say; I haven't handled very many criminal cases in the last number of years, but I have some very extensive matters in the office arising out of civil proceedings. One case on which I am handling an appeal has a record of 80 odd volumes, and they are very reluctant, under the present system and practice here, to give you very

(Testimony of Jacob Morris Danziger.)

many extensions. They hold that a lawyer being busy is no excuse. Perhaps it isn't, but I find myself here, by the turn of events, having this situation: I have a client here who hasn't even read the indictment, and I think he should so I could cover the field by referring to each and every count. He ought to know about it. And I would like to have an opportunity, before I finish my examination in chief of this [1477] witness, to have a chance to canvass a lot of this British material, and other material that pertains to this matter, so I can, if I feel it should be before your Honor for consideration, present it as part of my case.

The Court: I think the only way you could do that, thinking of the time element as it affects everybody, including myself, would be for you to permit Mr. Lucas to cross examine on your case in chief so far, with the privilege to you, on your re-direct, to go into new matter if your final study of your documentary data makes you think it is necessary.

Mr. Rose: I was going to ask your Honor if you would permit that form of proceeding. I think it is more expeditious to all concerned, even to Mr. Lucas, to have the whole matter before us.

The Court: I don't know whether it is fair or satisfactory to Mr. Lucas, but I am going to ask his cooperation.

Mr. Lucas: I will be very glad to consent to that, your Honor.

The Court: I take it the cross examination of

(Testimony of Jacob Morris Danziger.)

Mr. Danziger may begin now on the matters you have covered?

Mr. Rose: That is correct.

The Court: You may start that at 11 o'clock, Mr. Lucas.

(A recess was taken.) [1478]

Cross Examination

By Mr. Lucas:

Q. Mr. Danziger——

The Court: If Mr. Danziger prefers to answer questions in that direction (indicating) so he may be in a sense addressing me, I think you should accord him the privilege. He objects to the questioning from there.

Mr. Lucas: The only think I moved over here for——

The Court: The other reason is the more important. Mr. Rose, does your client prefer to be examined in this direction (indicating)?

Mr. Rose: No. He simply made the observation to me that he doesn't like to have his back to your Honor, and he said that is in effect what was happening if I examined from that end. If your Honor doesn't mind, he could examine from any point he likes.

Mr. Lucas: Thank you.

Q. By Mr. Lucas: Mr. Danziger, in your direct testimony here you have from time to time used the expression "Mr. Hill who was one of the owners of the properties," and I would ask you if by that

(Testimony of Jacob Morris Danziger.)

expression you mean that he was one of the owners of the fee title to the property.

A. He was one of the owners of the fee title to the great bulk of the properties. I think there were some parcels where the fee ownership might have been in some others who, in turn, had leased it to Hill. Hill and his [1479] partners had organized a partnership called Trinidad Mineral Claims. Whether it was Trinidad Mineral Claims Company or not, I don't know; but you will pick it up in the Standard Mining contract some place.

Q. Well, in your testimony to Mr. Mainland you had referred to 200 different owners?

A. No, I referred to 200 different parcels.

Q. 200 different parcels? A. Yes.

Q. Not 200 different owners?

A. Of course not.

Q. Then, how much of this land was owned by a Mr. Hill?

A. Well, Mr. Hill and his two partners, Gasken and Allahar, either owned the fee or the oil rights on every one of the 200 parcels.

Q. That is what I am trying to find out. What did they own?

A. They own either the fee or the oil rights on the whole 200 different parcels.

Q. In your testimony before Mr. Mainland you said as follows: "The oil rights were owned by three persons in Trinidad; one Thomas Hill, one W. A. Gasken, and one Allahar?"

A. That is what I am saying now.

(Testimony of Jacob Morris Danziger.)

Q. Did they own the oil rights or the fee title?

A. They owned—if they owned the fee they owned the [1480] oil, and if they owned the oil rights they owned the oil rights. There are a few of the parcels that they leased from others that owned the fee, but they owned the oil rights where they own the fee, and they owned the oil rights on the land leased from others to them.

Q. Can you tell me substantially how much of the total acreage did Mr. Hill own the fee title?

A. I can't tell you, but I think a large portion of it.

Q. Well, I direct your attention now to your testimony on page 3 of the transcript, which is an exhibit in evidence here, where you said as follows:

“The oil rights were owned by three persons in Trinidad, one Thomas Hill, one W. A. Gaskin, and one Allahar. They in turn had made a lease contract with a concern called Standard Mining Company, a New York corporation, that was controlled by Hill?”

A. That is correct.

Q. That is correct? A. Yes.

Q. Is it your contention now definitely that Hill owned fee rights to some extent?

A. It isn't my contention; it is a statement of fact, Mr. Lucas.

Q. That is what I am getting at. There were not 200 different owners? [1481]

A. There were 200 different parcels. Hill, Gaskin and Allahar had acquired either the oil rights

(Testimony of Jacob Morris Danziger.)

or the fee on 200 different parcels from a great number of different owners.

Q. All right. I direct your attention to the testimony you gave Mr. Mainland where you said on page 4 of that transcript, in response to this question:

“Q. What documentary evidence of the interest in these leases did Trinidad acquire?

“A. Well, they acquired or received the original recorded oil right documents from it, from 200 owners of 200 different parcels of ground.”

Mr. Rose: Just a minute, Mr. Danziger. Your Honor, I am disposed not to resort to any objections, because I am not the least bit alarmed that your Honor is going to pay any attention to any incompetent evidence, but I think on this one point I want to interject the objection, and I do make the objection that it is argumentative and has been asked and answered.

The Court: Continue the examination.

Mr. Lucas: Read the question, Mr. Reporter.

The Court: Don't read it. Repeat it and make it as short as you can. You are asking him an impeaching question.

Q. By Mr. Lucas: I will read you your question and answer again.

“Q. What documentary evidence of the interest in [1482] these leases did Trinidad acquire?

“A. Well, they acquired or received the original recorded oil right documents from it, from 200 owners of 200 different parcels of ground.”

(Testimony of Jacob Morris Danziger.)

Is that statement true?

A. It is not true if it is to be literally interpreted that there were 200 different owners to 200 different parcels, because I am quite sure that some of those parcels, more than one, were owned by some of the individuals.

Q. Do you contend now that Hill by any deed or conveyance of any character conveyed to the Standard Mining Company any fee title to the property?

A. Mr. Hill didn't convey anything by himself to the Standard Mining Company. The contract is a lease from Hill, Gaskin and Allahar, doing business as the Trinidad Mineral Claims. It is a lease to the Standard Mining Company, which company was a creation of Mr. Hill's.

Q. What basis did Hill, Gaskin and Allahar have for the assignment or making of that contract or lease?

A. They owned the oil rights or the fee rights to every one of the parcels.

Q. Then, when you testified here yesterday as follows, "Mr. Hill was one of the owners of the properties," that was not literally true, was it?

A. It was literally true.

Q. He was a part owner, wasn't he? [1483]

A. He was one of the owners of the property.

Q. All right. Did you ever see or personally examine any conveyance to Mr. Hill?

A. My office, Mr. Andrews, examined every one of the deeds of conveyance of oil rights or fee to

(Testimony of Jacob Morris Danziger.)

Mr. Hill, Mr. Gaskin and Mr. Allahar, and the report that I gave you this morning or I gave to Mr. Rose, which has gone in evidence, is his report on that examination.

Mr. Lucas: May I have Exhibit CC?

Q. By Mr. Lucas: I think you referred to this as a title report or having something to do with the title, showing the title to these separate parcels of land?

A. That is the report that Mr. Andrews made to me after he had examined the title to all of these properties.

Q. You referred to this as a title report, didn't you?

A. Well, you can call it a title report. I don't know how I referred to it. I am telling you what it is.

Q. All right. I will ask you to examine the document, if you have not already done so and are not familiar with it——

A. I have done so. I read it this morning.

Q. ——and point out to me where the name of Hill occurs either as an owner or a grantor.

A. If it doesn't occur there it would be obvious to you. He says, Mr. Andrews said: "I have made up a schedule from the three books of deeds to the Trinidad properties [1484] which you got from Hill containing all of the important matter shown in the deeds, and sufficient description so that the property can be identified for mapping and other purposes. This schedule has been made so that I won't have

(Testimony of Jacob Morris Danziger.)

to take with me by air the three heavy books of deeds. Apparently all of the deeds for the leased properties attached to the copy of the lease which you recently sent me from London contains several items for which there are no deeds. The chief one of which is a 505 acre tract secured from William Aubry Gaskin.

“We have ordered for you a large scale map of Trinidad on which you can probably more closely locate the leased lands from the information below. All of the lands for which we have deeds are in two wards—about the south central portion of the west side of the island, namely, Montserrat and Savannah Grande North. One portion of——”

Q. I dislike to interrupt you. I didn't ask you to read the document.

A. Ask your question again.

Q. I dislike to interrupt you, but I asked you if there was any place in there where Hill was listed as a fee owner.

A. I don't think anybody is listed as anything in there, Mr. Lucas. The thing speaks for itself.

Q. I quite agree with you. As I understand your basis for any asserted right by Trinidad International Petroleum [1485] is founded upon a contract between Hill, Gaskin and Allahar with the Standard Mining Company?

A. The rights are founded on an assignment of the Standard Mining Company rights under that contract made with Hill, Gaskin and Allahar, and

(Testimony of Jacob Morris Danziger.)

I think the Trinidad Mineral Claims, that partnership figures in it.

Q. In other words, from a legal standpoint the title of Trinidad has no higher source than the contract between Hill, Gaskin and Allahar with the Standard Mining?

A. That is correct, all they have is the assignment of that contract.

Q. In your testimony just recently concluded you said that there was a George Carlton to whom you remitted this money?

A. There was so far as I knew.

Q. Well, did you ever meet him? A. No.

Q. What was the extent of your acquaintance with him?

A. Why, he apparently wrote in as one of the Great Eastern salesmen or sales managers, or what not, I don't know; I never saw him.

Q. How do you know he was in existence, then?

A. Only because he apparently told me so by writing to me.

Q. Did you have any understanding with Carlton as to the payment and the amount thereof by you for any services [1486] he might render in the way of selling stock?

A. Yes, I had some arrangement with him as to what he was to get out of the sales or what we were to get out of the sales.

Q. Can you refer me to any piece of documentary evidence in the record that will reflect what the terms of that arrangement were?

(Testimony of Jacob Morris Danziger.)

A. Well, I presume that you can take a sale to somebody that brought in a certain amount of money and then a payment to Carlton of a certain amount of money, and correlate them and figure out what the basis is. That is the only evidence that I can point to for you.

Q. Can you take those exhibits, 16 and 17 in evidence, where you remitted him money, and correlate them with any sale that Carlton made?

A. I am not a correlator and I am not an accountant, and I can't do that, Mr. Lucas.

Q. All right. With respect to the matter of the codes Mr. Rose asked you about, you said that the code arrangement was something that was worked out between Mrs. Faulkner, your sister, and Carter while you were in Europe, is that your knowledge and recollection of it?

A. That is my best recollection of it.

Q. What did you learn about it when you came back from Europe?

A. I didn't learn anything about it. I saw it on some [1487] of the documents that were handed over to Mr. Mainland, and it was obvious to me that it was some kind of a code.

Q. Did you ask your sister about it when you came back from England?

A. No, I didn't ask her anything about it.

Q. Did you discuss it with her in any way?

A. Not to my knowledge.

Q. Do you know whether or not the code was

(Testimony of Jacob Morris Danziger.)

continued to be used by your sister from the time you came back from England and up to her death?

A. I see the code letters on some portions of the correspondence in the company files which I turned over to Mr. Mainland, and I don't have any recollection of having seen those files until I turned them over to him, after I turned them over to him, as a matter of fact, and I see what is apparently a code in her handwriting down in the corner, there are a lot of letters, and that is the first evidence that I saw that they had a code.

Q. And when you saw that you made no inquiry about it? A. No, I had no occasion to.

Q. All right.

A. My sister had been dead a couple of years at that time.

Q. Well, didn't you learn of this between 1937 and 1939?

A. No, I didn't learn of it to my memory until I saw [1488] it on some of this stuff that I handed over to Mr. Mainland when I handed him my files.

Q. The date of your sister's death was some time in September, 1939, wasn't it?

A. That is correct.

Q. And do you recall any indication on any of this correspondence of a code after 1939?

A. Well, I don't remember, Mr. Lucas, of any. If you show me some I will tell you very quickly.

Q. Did you yourself use the code in any of your correspondence with reference to Wake or Trinidad business?

(Testimony of Jacob Morris Danziger.)

A. I don't have any impression or memory of ever having used the code.

Q. Well, would you say you didn't?

A. I won't say any more than that. I have no memory or impression of having done so.

Q. Mr. Danziger, in Mr. Rose's direct examination you said that your views with respect to sales of Trinidad stock by Wake varied from time to time, depending upon the situation in England with respect to the imminence of some deal that would raise money for drilling. Am I right in that? A. I so stated.

Q. In other words, I take it that if the news in England or your correspondence with England indicated that a deal was about to be consummated whereby money would accrue to Trinidad, that you then weren't so anxious to make sales [1489] of stock?

A. Well, depending a good deal upon my own financial circumstances at the moment, too.

Q. Isn't that what you meant when you said that you didn't want to make sales when the news was good?

A. Well, I said what I meant, Mr. Lucas, if that is what you are asking me.

Q. Tell me about it again. I haven't a transcript in front of me.

A. My appraisal of the market value of the stock would fluctuate. Before I had a deal to get the properties developed and I was just working on one, my appraisal of the value of that stock

(Testimony of Jacob Morris Danziger.)

was a good deal less than when I had made a deal. I would be willing to sell some stock at times, I would have sold some stock at one time to get some very necessary transportation money at a great deal less price than I would have sold it for two or three weeks after that when the company was fully financed.

Q. Well, as a matter of fact, weren't you always willing at any time to sell out to the public or to anybody who would buy it the entire 165,000 shares of Trinidad stock that was owned by Wake?

A. No, sir, I never was willing to sell over 20,000 shares that I made the original deal with with Mr. Carmen and the Great Eastern Company.

Q. You never were willing to sell—— [1490]

A. I was not, and I never attempted to sell it.

Q. Do you not remember in some of this correspondence there is a statement in writing over your signature that you understood that the offer of the rights to the Great Eastern people were to be made to every Great Eastern stockholder?

A. No, my memory is just directly to the contrary, that I said any time I was asked concerning it, that the rights were not being extended to anything over the stockholders who would absorb 20,000 shares. That was the limitation of the contract that I made with them, and you will find, Mr. Lucas, if you look for it, something in the correspondence to the effect that the right was not offered to all of the Great Eastern stockholders.

Q. I will ask you what you meant by this

(Testimony of Jacob Morris Danziger.)

answer when you were being interrogated by Mr. Mainland under oath. I refer to page 61 of the transcript:

“Q. And he never commented that it was next to impossible to purchase Trinidad stock or notes because there was none offered?

“A. Not to me and I don’t think to anybody else.

“Q. As a matter of fact, there would be a plentiful supply if anybody wanted it, would there not?

“A. If they sought me or came in contact with me or Wake Development Company in any fashion there was a supply available up to the amount of our holdings.”

What did you mean by that answer? [1491]

A. Well, I presume just what I said, Mr. Lucas.

Q. Well, reconcile that for me, please, with your statement a moment ago that you would not at any time sell more than 20,000 shares?

A. Well, there was no time that I entered into or that I was willing to enter into a contract with anybody to sell more than 20,000 shares of that stock.

Q. I direct your attention to Government’s Exhibit 54 in evidence, and I direct your attention to the first yellow sheet of that exhibit on the reverse side, under date of February 14, 1938, you were back from England at that time, were you not?

A. I came back in 1937.

Q. This offer was supposed to have been made

(Testimony of Jacob Morris Danziger.)

to every stockholder of Great Eastern Natural Gas, and a right certificate was issued to those who wished to exchange at that time?

A. I presume that the Great Eastern Company made an offer to all of their stockholders, but they only had under contract 20,000 shares which they could offer to their stockholders, and I understand their stockholders were a million and a half or two million shares, and they didn't have available under any contract with me stock to offer to all of their stockholders, but they probably figured that they would offer to all of their stockholders and but a small portion of them would accept it.

Q. After this episode with Mrs. Pierce when you contend you told them—and I mean by “them” Great Eastern—that they were in default, you continued to sell after that, didn't you?

A. Mr. Lucas, on an arrangement I made with Mr. Carmen I let him go on selling to his Great Eastern stockholders under the arrangement that I had made for 20,000 shares, but a very small portion of which had been exhausted.

Q. I show you, after having first exhibited to Mr. Rose——

Mr. Rose: Is it in evidence?

Mr. Lucas: No; it is something not in evidence.

Mr. Rose: This hasn't been referred to before, has it?

Mr. Lucas: No, it has not.

Mr. Rose: Go ahead.

Q. By Mr. Lucas: I show you a yellow second

(Testimony of Jacob Morris Danziger.)

sheet of paper without any date on it, at the top is the salutation "Dear Madam", and I direct your attention to the handwriting below the typed portion of the letter, and ask you if the handwriting is your own.

A. The handwriting is my own. I am trying to read it myself right now.

Q. All right. Without regard to what the handwriting below says——

A. If that is all you are asking me, it is my handwriting. [1493]

Q. All right. I direct your attention to the left-hand margin of the document, and we have some figures there or letters, figures and letters, "KAAM—3/22/" with a notation "Air", and ask you if those letters in red ink "KAAM—3/22/" were on there when you put the handwriting on the document.

A. I don't know. They are in my sister's handwriting. I don't know when she put them on.

Mr. Lucas: We offer this in evidence as government's exhibit next in order, if the Court please.

Mr. Rose: The only objection I have to it, if the Court please, is there is no foundation laid as to the date.

I will withdraw the objection and let it go in.

The Court: Admitted.

The Clerk: 114.

(The document referred to was marked as Government's Exhibit 114, and was received in evidence.)

(Testimony of Jacob Morris Danziger.)

Mr. Rose: Is there a date on it, Mr. Danziger?

Mr. Lucas: I see no date on it at all.

Mr. Rose: Yes, as I remember, there is a date, "March 20, 1939".

Mr. Lucas: On the reverse side.

Mr. Rose: It is part of the document.

Mr. Lucas: I offer the entire document.

Q. By Mr. Lucas: Mr. Danziger, you testified, I believe, yesterday that at no time after you saw Mr. Carter [1494] in New York in 1937 when you returned from Europe did you thereafter communicate with him or see him in any way to your knowledge; is that right?

A. I never have seen him. I saw him in the court room, and I never communicated with him knowing that he was Mr. Carter or Mr. Carmen.

Q. In other words, your statement is now that you never knowingly and to your knowledge, after you left New York to come to California in 1937, thereafter communicated with Mr. Carter?

A. Knowing him to be——

Q. Knowing him to be Carter?

A. Well, some time after Mr. Mainland came into this picture and told me some things I communicated with him with a very strong suspicion that he was somebody other than he was.

Q. Well, now, how did you acquire his address? You didn't get it from Mr. Mainland, did you?

A. I must have gotten addresses from Carlton or somebody, because I had no permanent address for the man I was communicating with.

(Testimony of Jacob Morris Danziger.)

Q. All right. When, approximately, did you first communicate with him knowing him to be Carter or having a strong suspicion that he was Carter?

A. Well, I think I communicated with him shortly after Mr. Mainland's first visit to my office some many [1495] months before the formal testimony was taken which has been read into evidence here.

Q. Well, that would be during the year of 1941, would it not?

A. Well, I just won't try to carry that along. You can figure it out for yourself. I am not going to tell you what year it was.

Q. Well, it was some time before, you say, the formal testimony was taken?

A. Yes, Mr. Mainland came to me and interviewed me over a long period of time, a great number of conferences, and then finally said, "Come on down, we want your formal testimony", and gave me a formal subpoena, and we went on down. But in the meantime he had had all my files and all the information that I had given him over a period of a good many months before that.

Q. Yes, but do you contend that you received Carter's address from Mr. Mainland?

A. No, I never got any address from Mr. Mainland. Mainland was trying to get me to give him Carter's address.

Q. All right. Can you give us your best recollection from whom you did get it?

(Testimony of Jacob Morris Danziger.)

A. I don't know where it came from.

Q. You haven't any idea?

A. I don't know that it was Carter's address.

Q. Did you ever have a suspicion that he got the mail [1496] you sent him?

A. Oh, some mail that I have written to him since the indictment and possibly some after Mr. Mainland's first visit there I had every reason to believe that he got it.

Q. Well, did you ever knowingly communicate with him before the indictment and after you left New York?

A. Yes, I communicated with whom I suspected was Carter.

Q. And what was the basis of your suspicion?

A. What Mr. Mainland told me.

Q. And, is it your testimony now that you never knowingly communicated with Carter knowing him to be Carter, up until the time Mainland first interviewed you?

A. That is my impression, Mr. Lucas.

Q. Is that your best recollection?

A. That is.

Q. All right. I refer you to Governmnet's Exhibit 96, in evidence, being a letter starting out, "Dear Friend:" and signed by the initials "JM".

A. Let me see it, will you, Mr. Lucas?

Q. Yes. I want to give it a little further reading myself before I give it to you, and I ask you if that was a letter which you addressed to Carter knowing him to be Carter.

(Testimony of Jacob Morris Danziger.)

A. Well, at this time——

Q. First please answer the question. [1497]

A. I can't answer it literally. Ask it again.

Q. Did you write that to Carter——

A. I wrote this.

Q. ——knowing him to be Carter?

A. I wrote this letter and I had at that time a very strong suspicion that the man I was writing to was Carter.

Q. What was the occasion of writing that letter to Carter?

A. Well, I presume I wished to communicate the contents of it to him.

Q. Do you recall where you addressed it?

A. No.

Q. All right. Why didn't you address him as "Dear Carter" or "Carmen" or "Cameron"?

A. I don't know why. I don't know why I didn't address him in some other fashion.

Q. All right. I will ask you if this is true: "Dear Friend: I received a note from you some weeks ago", is that true?

A. I am sure it was, or I wouldn't have stated so.

Q. Do you recall now how he signed it?

A. No.

Q. "It is nice to know that you are apparently alive and going strong"; he had told you he was moving around, did he?

A. He must have, or I wouldn't have made that comment. [1498]

(Testimony of Jacob Morris Danziger.)

Q. You said to him as follows: "At the moment I am working out my oil venture in Sicily". Was that true? A. It was.

Q. "Have a fine independent oil company ready able and willing to go into development so soon as we can iron out some of the diplomatic angles;" is that true? A. It is and was.

Q. Were you looking forward to using Carter's services in connection with that fine oil development? A. No.

Q. You said as follows: "Incidentally a friend in London has a deal on to take over our TIP land in Trinidad and give them a whirl." Who was that friend in London?

A. Mr. Sutherland.

Q. "whereby the TIP Company will have a substantial interest"; was that true?

A. It was.

Q. Now, "Never a word on the SEC matter". What did you mean by that?

A. At that time I take it that the indictment had been handed down for some long period of time and that I am telling him that nothing—whatever the language is it speaks for itself.

Q. You wrote to him that business with regard to the SEC knowing that he was indicted along with you here? A. Yes. [1499]

Q. And you sought that means of conveying information to him about the pendency and status of this present proceeding before the Court?

(Testimony of Jacob Morris Danziger.)

A. That letter is obvious that I was informing him.

Q. Well, you see the letter isn't addressed to him, and it is written in a vein that isn't quite as obvious as you say it is. I am glad to hear you admit it. You said as follows:

"If you ever see C tell him for me that I hope that the bastards never catch up to him and that they abandon all hope in that direction if they have any"?

A. That letter wasn't written to him at all; it was written to somebody he told me to write to when I wanted to communicate with him.

Q. That is what I wanted to find out.

A. The contents tells me that.

Q. Do you now repudiate the statement you made a moment ago that you wrote it to Carter?

A. I didn't write it to him. It was written to somebody he told me to write him to get it to him. It is written in the third person.

Q. It is not so obvious, then, that this is a letter to Carter?

A. I don't wish to argue with you, Mr. Lucas. Ask me a question and I will answer it.

Q. Thank you, it is a point well taken. [1500]

Do you now say you wrote this to a third person and not Carter? A. Yes.

Q. The only reason for that is the little reference I have just referred to here?

A. Yes. It states in there: tell your friend C. "C" is Mr. Carmen.

(Testimony of Jacob Morris Danziger.)

Q. There is no doubt about that in your mind, is there? A. I am sure there isn't.

Q. All right. Now, "If you ever see C tell him for me that I hope that the bastards never catch up to him and that they abandon all hope in that direction if they have any. It must be tough on him to try and get by in his business with that thing hanging over him but I don't believe he is among those being sought for." Did you believe at that time they weren't seeking Carmen?

A. Yes, I meant just what I said there, and I believe just what I wrote.

Q. "He is small fry and if he is out of the security line there is no reason why he should be pursued." Did you believe that? A. I did.

Q. "But tell him to please not let me know his whereabouts—I would not want to think that possibly something I had done innocently had hurt him any." Do you still [1501] contend you were writing this letter to a third person to communicate that information to Carter?

A. To tell it to him.

Q. You don't want to change your testimony that you wrote this——

Mr. Rose: Just a minute. I object to that as argumentative.

The Witness: I don't want to change my testimony at all, Mr. Lucas.

Mr. Rose: Just a moment. Opposing counsel may be encouraged by my silence. I don't want

(Testimony of Jacob Morris Danziger.)

to meddle with this thing, your Honor, but it is getting to a point——

The Court: I don't want you to meddle with it either. I am very much interested in this examination. Continue it.

Mr. Rose: Very well.

Q. By Mr. Lucas: "They once asked me during the investigation would I tell them his address if I got it and I said I would not." Is that literally true?

A. Yes, I told that to Mr. Mainland.

Q. Mainland asked you for Carter's address?

A. Yes.

Q. Did you know it at the time? A. No.

Q. If you had known it you wouldn't have given it? A. I don't think I would have.

Q. But you say here, "They once asked me during the [1502] investigation would I tell them his address"; did Mainland ask you?

A. Mr. Mainland asked me if I know his address would I tell him, and I told him no. Then he asked me, "If you hear from him any time giving you any place to reply to him, will you telephone me and let me know?" And I said, "No, I am not an informer."

Q. Didn't you tell Mainland in the course of this written examination that you had never seen Carmen or Carter or communicated with him directly or indirectly at any time during the period from 1937 until the time you were being examined?

A. Knowing that he was Carter, I did say that.

(Testimony of Jacob Morris Danziger.)

Q. That's right.

A. This letter is written two or three years after that.

Q. This letter is written after the time Mainland——

A. This is written two years after the indictment, Mr. Lucas.

Q. Yes, that's right. This letter was probably written in 1943 or '44, wasn't it?

A. When was the indictment?

Q. 1941.

A. This letter was written at such a time that in my mind they were not doing anything with it, a long time had elapsed and I tell him so there.

Q. You say you tell him so. And isn't it a fact that [1503] you were telling this to Carter?

A. I was telling it to the person that he told me to write to to convey it to him.

Q. Have you got a scrap of correspondence in any way that will indicate to you now the person to whom this was addressed?

A. He gave me some address—well, I think he used the address here in the court room and said it was his mother's place, some place in New York.

Q. All right. Is that the address that you wrote this communication to?

A. It is my guess, Mr. Lucas. I don't know where I mailed that document to, that letter to.

Q. Was that the address of Carter or was it the address of the person to whom you wrote the letter?

(Testimony of Jacob Morris Danziger.)

A. So far as I know it wasn't Carter's address. I never knew an address for him.

Q. All right. Did you know this man at all whose name Carter gave you to write to?

A. No; it was some friend of his.

Q. Some friend of his?

A. I am not sure it was a man. My impression is that it was Willis, Mrs. Willis, something of that character. I am only speaking from an impression. I haven't it down any place, and it isn't apparently on that letter.

Q. Why did you tell the person to whom you wrote this [1504] letter as follows: "They set out to mess me up and they did that plenty"?

A. Why did I say that?

Q. Yes, to this stranger.

A. It wasn't a stranger. I was talking to a person and told them to tell Carter something, or Carmen.

Q. That doesn't appear here.

A. Well, I think the context of the letter there says, "If you ever see C tell him," and then what follows is what to tell him.

Q. You said as follows, in a separate paragraph totally unrelated to that paragraph, "If you ever see C," you say as follows in the closing paragraph: "My best for the holidays." Was that addressed to this stranger whose name was given you by Carter?

A. No; all of it was intended to be conveyed

(Testimony of Jacob Morris Danziger.)

to Mr. Carter, according to the context of the letter, Mr. Lucas.

Q. You said: "Should any of my affairs take me east I will write you." Was that to this friend whose name Carter gave you?

A. Well, I don't know whether I would have written to that friend or if I would have had an address of Carter I would have written to him.

Q. What did you mean by that statement?

A. Just what I said.

Q. That you would call upon this friend if your [1505] affairs took you east, or that you would write that friend?

A. No; what I intended to do was to get in touch with Mr. Carmen or Carter, if my affairs took me east.

Q. "There is always a chance I may have to fly to Italy". Were you telling that to the friend to tell Carter, or were you telling that just to the friend?

A. I wasn't telling anything to the friend. I didn't even know the friend.

Q. "Regards and all good wishes." Was that for Carmen or the friend?

A. It was intended for Mr. Carmen.

Q. In Exhibit 105 there is a letter on the stationery of the Park Lane Hotel, 1st of July, addressed to "My Dear 'Old Timer'".

The Court: What year?

Mr. Lucas: This letter that I read from does not contain a year date, but it refers to a letter,

(Testimony of Jacob Morris Danziger.)

and there is an accompanying letter in the exhibit for 1937.

Q. By Mr. Lucas: You wrote this letter? Pardon me if I assume you are too familiar with it. I am sorry, Mr. Danziger.

A. I haven't looked at it. Maybe I saw it here the other day, I am not sure.

Q. You wrote that letter, didn't you, to Carter?

A. No, I didn't write it to Carter.

Q. You didn't? Who did you write it to? [1506]

A. Just let me read it first.

Q. Yes, I will be happy to, I don't want to disturb you or hurry you.

A. My impression is that it was written to Carlton.

Q. Carlton? A. To Carlton.

Q. Did you have any correspondence with Carlton while you were in Europe?

A. Yes, I think I did have, either had it or my sister wrote me something concerning it.

Q. Do you recall where you addressed this letter to Carlton to? A. No.

Q. Were you very intimate with this fellow Carlton?

A. Not at that time. I ultimately became better acquainted with him.

Q. Did you ever meet him prior to this letter?

A. No.

Q. You said awhile ago you never met him, didn't you?

A. If I said that awhile ago, it is perfectly true.

(Testimony of Jacob Morris Danziger.)

You asked me if I met him prior to that letter and I said no.

Q. Let's square it off——

A. I don't think I ever met him, in the light of certain circumstances that I learned here, why—

Q. This letter says: "My Dear 'Old Timer' "; did [1507] you know this chap Carlton well enough to address him that way?

A. No. But my impression is that my sister had written to me that some Mr. Carlton of the Great Eastern group had written in and called himself "Old Timer", I remember her commenting on it, that she thought it was a little fresh on the part of a salesman to address me that way after one or two communications, and she had evidently sent me something, because you will notice I have got "Old Timer" there in quotations. So it was some reference he made in something that came to me from the office.

Q. He called you Old Timer, and you called him Old Timer in addressing him?

A. That is obvious there.

Q. You said to Carlton as follows, "I am leaving here for New York on Baltimore Mail Line 'City of Norfolk' on July 12 and will be in New York on the 22nd. I may likely go to Barbizon-Plaza but am not yet certain though I will collect mail there if I don't go there." Had you had any prior correspondence with Carlton indicating that he was expecting your arrival in New York?

A. No, I don't think anybody was expecting my

(Testimony of Jacob Morris Danziger.)

arrival in New York. I didn't know myself that I was even going to be in New York until a very few days before I left.

Q. Did you have any correspondence with Carlton whereby he evinced any interest in your arrival in New York? [1508]

A. It must have been, Mr. Lucas.

Q. What is your best recollection on it?

A. Well, my best recollection is that there was some correspondence with Carlton.

Q. Now, "I want very much to see you—will not likely be in New York for a week—possibly I can personally help with Parsons—or anyone else. I would commit murder to get over a nice sale." Did you know then that Carlton was working on the Parsons deal?

A. No, I didn't, Mr. Lucas. My impression is that Mrs. Parsons had written in to the office and the letter had been sent to me, some disappointment in the handling of her stock, that whoever sold it to her had made, and I think I wrote her something on the subject some time, and my impression is that what I meant there was that I would help him explain the situation to her. I remember sending her from over there a copy of the Craig report.

Q. Well, didn't you then know that Carter was working on the Parsons deal?

A. You will have to differentiate as to whether it was Carter as Carter or Carter as Carmen or Carter as Carlton or something of that character, Mr.

(Testimony of Jacob Morris Danziger.)

Lucas. I don't want to be placed in the position, with my present knowledge that Mr. Carter was Carlton, because I heard him say so here in the the court room, I don't wish to be placed in the position of saying he was Mr. Carmen or somebody else at [1509] that time.

Q. Well, did you at that time repudiate that you didn't know—withdraw that.

At the time you wrote this letter just tell me candidly did you write this letter to Carter knowing him to be Carter?

A. I don't think that letter went to Carter. My impression is it went to Carlton.

Q. All right. Now, at that time did you have any suspicion that Carlton was Carter?

A. I don't know when I got the first suspicion, Mr. Lucas.

Q. Did you ever get it before you got in the court room?

A. Oh, yes. Mr. Mainland gave me a lot of information that gave me a pretty firm idea.

Q. You never had the slightest suspicion of it until Mainland talked to you about it, had you?

A. I won't say that, Mr. Lucas. I don't know when I got the first slight suspicion. I know that what Mr. Mainland told me gave me a stronger feeling than I might have had.

Q. Now, will you tell me why you said to Carlton as follows: "I would commit murder to get over a nice sale"?

A. Well, I told him that because I was having

(Testimony of Jacob Morris Danziger.)

real financial difficulties in keeping myself over there during the two years that I was there, and I was hanging on by my teeth to get to the point to close the deal for the company's [1510] finances, and I actually borrowed money to get home on, and I was anxious and desperate if I could get a sale through to solve that situation I would have been very, very happy to do it.

Q. Did you tell all that in this letter, or, I mean, did you imply all that in this statement, "I would commit murder" to a stranger, a man you never met?

A. I was talking to somebody that was selling Great Eastern stock, Mr. Lucas.

Q. Do you now assert and affirm that you did not know that you were writing this letter to Carter?

A. Well, I don't know. I can't take myself back to the day that I wrote that letter. My impression is that the first designation of anybody as "Old Timer" came from Carlton.

Q. Never Carter? Did you ever address Carter as "Old Timer"?

A. I don't think knowingly so.

Q. Well, I want your best judgment.

A. I didn't know that he was Carter at the time, I am quite satisfied of that, if I ever referred to him as that.

Q. Let's look at it even in the light of what you learned in this trial. Did you ever address Carter as "O.T."?

(Testimony of Jacob Morris Danziger.)

A. It is quite obvious that the man I addressed as "O. T." or "Old Timer" was Warren, because of what I heard [1511] him say in the court room.

Q. And from what you heard here it is quite obvious, isn't it?

A. From what I have learned here, yes.

Q. You are not relying in making that statement on just a mere sworn statement of Mr. Carter from the witness stand, are you?

A. Mr. Mainland gave me some very strong suspicions. He told me—wanted to know if I knew that Carmen had jumped his bail out in Chicago. I told him no. The last I heard of it when I met him in New York his case was pending on appeal, he told me that, and then he told me quite a number of things which he learned in his investigation, all of which pointed to Carmen or Carlton having been the same persons.

Q. Did you not deny on numerous occasions in the testimony before Mr. Mainland that you did not have the remotest idea of who "O. T." was?

A. I probably did. Whatever I said, I said, Mr. Lucas. And if you will produce it and read it to me I will confirm it to you.

Q. But independently of that, do you not remember that you denied who "O. T." was?

A. I denied knowing any salesman with the initials "O. T." I remember that very well, as I heard my testimony read here in the court. He was talking to me, [1512] trying to find out some salesman's name with the initials "O. T." And O. T. didn't

(Testimony of Jacob Morris Danziger.)

occur to me then as an abbreviation of "Old Timer". He didn't ask me about Old Timer. He asked me about a salesman whose initials were O. T., and at that time it didn't occur to me any such. I couldn't think of any name that had those initials, and I don't know.

Q. With reference to this man Carlton that you wrote this letter to, about which we have been discussing, why did you say, "I am sending this letter to Phila. and a duplicate to L. A. to send to you in case they have a better address."?

A. I registered a fact.

Q. Did you know at that time while you were in England that Carlton was acquainted and had connection with your Los Angeles office?

A. Yes, I knew that Carlton had.

Q. From whom did you receive that information? A. From my sister.

Q. And she had written to you about Carlton?

A. My impression is that she had written to me that a salesman named Carlton had greeted me as Old Timer or something of that character. That is my best memory of what I learned at that time.

Q. Didn't you know at that time when you came back from England that a man by the name of Edwards had been selling Mrs. Parsons? [1513]

A. No, I never knew that anybody named Edwards was selling Mrs. Parsons.

Q. Hadn't Mrs. Parsons written to you to that effect?

A. She has written, there is something in the

(Testimony of Jacob Morris Danziger.)

correspondence, where she mentioned that Mr. Edwards had—I don't know whether she said he sold her, my impression is he was trying to get some stock transferred that he had given to her, or hadn't gotten, she wrote something about Edwards, I heard it the other day.

Q. You undertook to write her?

A. I wrote Mrs. Parsons quite a number of letters, and I have seen them in evidence here, Mr. Lucas.

Q. All right. Who did you think was selling, actually contacting Mrs. Parsons in making this deal?

A. I don't know that I thought anything about it.

Q. Now, in view of the testimony you have stated as to your financial condition at the time when you returned from England, do you recall this letter, Mr. Danziger, that you wrote to Mrs. Parsons? I will ask you to refresh yourself on it again before I interrogate you about it.

A. I wrote this letter, if that is what you are asking me.

Q. On what basis did you make this assertion to Mrs. Parsons: "Dear Mrs. Parsons: It is pleasing to have advices from our California office to the effect that you have apparently added to your holdings in this company and [1514] I feel sure that your investment will prove very profitable."—You then, in using "company" meant——

A. Trinidad.

(Testimony of Jacob Morris Danziger.)

Mr. Rose: Excuse me. Mr. Lucas, is there a date on that?

Mr. Lucas: Yes; June 28, 1937.

The Witness: From London.

Q. By Mr. Lucas: "As you likely know——" I continue to read, Mr. Danziger —— "As you likely know I have, as president of the company, been in England for some time on business of the company and while I am not at liberty at the moment to give out any details, I can assure you that Trinidad and this company have a brilliant future"—— Did you believe that at the time?

A. I believed it and knew it.

Q. Had a brilliant future?

A. Yes, and it still has.

Q. At that moment?

A. At that moment it did have a very, very, decided one.

Q. What factor justified you in making that statement to her?

A. Now, that was written in when? June?

Q. Just before you left England, June 28.

A. I had just closed a transaction with the Anglo something, I can get it from a letter here, but it is [1515] Colonel Nicholson's company, where by they had agreed that they were going to furnish the company the money to drill five wells, which was what I had been trying to get all the time I was over there.

Q. You had just concluded a transaction?

A. Yes.

(Testimony of Jacob Morris Danziger.)

Q. Was the transaction in writing?

A. It was in confirmatory—yes, it was in writing in letters between the two of us.

Q. Just in the form of a letter?

A. It was in the form of a letter that had a binding effect as though it was 40 pages and had four seals on it.

Q. You are an attorney? A. Yes.

Q. Will you tell me by what means you feel that a letter can be binding?

A. A letter written and accepted between two persons is binding.

Q. All right. Have you got a letter which confirms or conforms to what you say there?

A. Isn't it among these files here that Mr. Mainland has gotten from us?

Q. I don't know.

A. Well, look and see if it isn't there. If it isn't there, then I will find it. My impression is you have got all my files. [1516]

Q. You rely upon that letter in making this statement?

A. I rely upon the culmination of a series of negotiations that had been extending for a period of over a year, with a reputable banking brokerage house in London that I culminated within a very few days before I left London to come home to get things in order for the company to go to work.

Q. Was it in writing?

A. It was in writing.

Q. Where is it?

(Testimony of Jacob Morris Danziger.)

A. I am asking you if it isn't in Mr. Mainland's files of mine.

Q. Do you contend you gave Mr. Mainland any such a letter?

A. I gave Mr. Mainland all the files we had, Mr. Lucas, and if it isn't in those files I will hunt elsewhere to find it for you.

Q. I show you, after first having shown to counsel, the only letter that has been called to my attention, it is dated June 15, 1936, addressed to Trinidad International Petroleum Limited, 12 Bow Lane London and ask you if that perchance is this confirmatory letter about which you speak.

A. It is not.

Q. This refers to Trinidad business does it not?

A. Yes. This is the group that I dealt with when I first got over there. [1517]

Q. What became of that deal?

A. These people sold some different stockholders under this arrangement whose certificates and names appear in these stubs that are among the things that Mr. Mainland got from us.

Q. Do you refer to that 500 shares——

Mr. Rose: Just a moment, Mr. Lucas. Do you mind telling me from what source you got this letter?

Mr. Lucas: I will have to confer with Mr. Mainland. It was given to me.

Mr. Rose: Does it come from him?

Mr. Lucas: I just got it from him. It was just handed to me by him. I don't know its source. I am asking that it be marked.

(Testimony of Jacob Morris Danziger.)

Mr. Rose: I would like to see it.

The Witness: That is not the arrangement I am talking about that we completed just before I left. That is some time in '36?

Q. By Mr. Lucas: Right.

A. The arrangement I completed was completed within a very few days before I left London, which was in July 19—I better get that passport.

Q. '37?

A. '37. And that isn't the outfit at all. I can get the name of it. It is Anglo something. I call it Colonel Nicholson's firm. He is the man that I dealt with. [1518]

The Court: We will recess until 2:00.

Mr. Rose, should Mr. Lucas' cross examination be concluded this afternoon, it won't be possible to adjourn, then, to permit you to make the examination that you are talking about, so I will have to ask you to have the defendant read the indictment during the noon recess, and I will have to ask you also to prepare yourself on the further documents. In other words, the case must be pushed through to an early conclusion.

Mr. Lucas: I am perfectly willing to go ahead with my cross examination, but if Mr. Rose only has a half hour or so, or whatever it is, if it is possible after the noon recess for him to resume his direct examination I will be perfectly willing to defer my cross examination until a later time.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m.) [1519]

Los Angeles, California

Friday, February 2, 1945, 2:00 p.m.

JACOB MORRIS DANZIGER,

called as a witness by and on behalf of the defendants, having been previously duly sworn, resumed the stand and testified further as follows:

Mr. Lucas: The letter which I had just shown the witness, your Honor, and offered before the noon recess, I don't believe it was marked in evidence as an exhibit. I now re-offer it and ask that it be marked Government's Exhibit next in order.

The Court: It may be marked and admitted.

The Clerk: 115.

(The document referred to was marked as Government's Exhibit 115, and was received in evidence.)

Cross Examination—(Continued)

By Mr. Lucas:

Q. Now, Mr. Danziger, you remember this letter, you said, and testified to something about it.

A. You better let me look at it again. I don't recall it.

Q. Yes.

A. Well, I don't say that I remember the letter itself. I remember the people that we did this business with.

Q. They were the people, I think you said, that bought 500 shares, their names are on record in the books of the company? [1520]

(Testimony of Jacob Morris Danziger.)

A. Yes, they are the people that I first talked to when I got over to England.

Q. Well, bearing in mind that the testimony in the record is, according to Mr. Mainland, that the books of the Trinidad Company reflect only 500 some odd shares outstanding to English stockholders with addresses in England, would you say that those are the people who were sold as a result of this?

A. I don't think all the English stockholders were, Mr. Lucas, because—well, Mr. Hill had made some sales over there, I don't know whether they ever got on to our books as company sales or transfers or not. You see, he went over and took some stock books with him, he made some sales over there, delivered his own stock, and I don't know whether the names that you refer to as English stockholders included or excluded those names. But these people——

Mr. Rose: A little louder, Mr. Danziger, I can't hear you.

The Witness: These people Carrington Evans did make some sales under this option.

Q. Passing from that for the moment, I believe somewhere in your record your testimony is that your sister died on September 16, 1939, is that correct? A. September, '39, I remember.

Q. For the purpose of refreshing your recollection, [1521] wasn't it about the 16th of the month?

A. I don't have the faintest idea. Something

(Testimony of Jacob Morris Danziger.)

you may have may refresh me. She died in September, '39, that is my memory.

Q. I refer now, again, to Government's Exhibit 105, the letter that you wrote to Old Timer, in which you said, "I want very much to see you," and I will ask you if it isn't a fact that one of the reasons you wanted to see Carter when you returned from England was to talk over with him somewhat his conviction in the state courts of Illinois?

A. I don't think so. We did talk about it, but I don't think I had in mind that I was coming over and wanted to see him to talk about it.

Q. At any rate, you had been advised by both Carter and Mrs. Faulkner that he had been convicted in the courts of Illinois while you were over in England?

A. I am not so sure that I had been advised that he had been convicted or just that he had been in trouble, but I knew——

Mr. Rose: Mr. Danziger, get back to your old fire so I can hear you, put a little animation in what you are saying.

A. I don't know that I knew that he had been convicted. I won't say I didn't, but I knew he had been in some trouble in Chicago, because I had been so informed, I think, from my sister.

Q. And hadn't Carter himself written you to that effect? [1522]

A. He might have, I don't remember, Mr. Lucas.

Q. Then at any rate, when you met in the Bar-

(Testimony of Jacob Morris Danziger.)

bizon Plaza Hotel, or wherever it was in New York, you did discuss with him his conviction?

A. Yes, he showed me his brief on appeal.

Q. What did he tell you that he was convicted about?

Mr. Rose: Objected to as immaterial and irrelevant to these issues, your Honor.

Mr. Lucas: As long as their relationship continued for many years thereafter, I think it is quite material.

Mr. Rose: Counsel is adverting, apparently, by showing me this thing again, to an attempt to bring in the collateral matter—he is trying to clutter up the record with the appeal and the merits of the case back there——

The Court: Wait a minute, wait a minute. Objection sustained.

Q. By Mr. Lucas: Did he tell you this, that he had been convicted only of failing to register as a stock salesman?

A. That is the impression I have now, and I think that is the impression I had then.

Q. Did you have that impression after reading the brief?

A. I don't remember what impression I had after I read the brief, except I thought it was a rotten brief, [1523] and I have in mind why I thought so.

Q. Without regard to the merits or demerits of the brief, what did you learn as a result of reading

(Testimony of Jacob Morris Danziger.)

the brief as to the nature of the charge that Carter was convicted of?

Mr. Rose: Objected to as immaterial.

The Court: Sustained. I am not interested in that.

Mr. Lucas: Very well, your Honor.

Q. By Mr. Lucas: I show you, Mr. Danziger, Government's Exhibit 112, in evidence, and direct you to the part of the exhibit on the heading of the Securities and Exchange Commission, under date of September 13, 1934. I don't recall that you have testified about that. Have you ever seen that before?

A. I said yesterday, or I said some time I didn't see it in that form.

Q. You saw it in a different form?

A. Yes.

Q. And what is your recollection as to the difference between this and the form you saw?

A. The form that I saw had an addressee on it, either Wake Development Company or the Trinidad International Petroleum Company.

Q. Do you now recognize that as a part of the material that you had on hand at the time you met Carter and got into this Great Eastern deal with him?

A. I don't remember having it at that time. I don't [1524] remember seeing it in this form at that time, or any other form, for that matter.

Q. Well, I call your attention to the fact that

(Testimony of Jacob Morris Danziger.)

the letter which you are now looking at bears the date of 1934——

A. I see that it does.

Q. ——which is prior to the time that you met Mr. Carter. Does that aid you any?

A. I am not confirming that. I just can't fix the date when I met him. I met him shortly before we signed that Great Eastern contract. I don't remember the date of that. And it may be that this date can be correlated to it.

Q. Still directing your attention to that particular paper, did you have any discussion with D. B. Howe, or any communication with D. B. Howe regarding that or a similar piece of paper carrying an address on it?

Mr. Rose: Just a second. I object, your Honor, to this question on the ground that it is bringing in a new party, a conversation or discussion had with Mr. Howe.

The Court: That is preliminary. Answer yes or no.

The Witness: Well, I don't know as I can answer that question yes or no.

The Court: Then your counsel will have to make an objection. I was trying to help him out in his proceeding.

The Witness: If he will ask it again——

Mr. Rose: I want to be certain whether part of that question was proper. He tied it in with Howe, and that is [1525] what I was going to object to.

The Court: Try it again. Ask the question.

Q. Did you ever have any conversation with

(Testimony of Jacob Morris Danziger.)

D. B. Howe or D. B. Howe & Company concerning that exhibit on the letter-head of the Securities and Exchange Commission or one that you saw in a different form but containing the same material?

A. I very likely had discussions with D. B. Howe & Company concerning the registration to which that refers. I have no knowledge of ever recognizing this document as ever having been the subject of any discussion.

Q. But you did discuss with him and probably communicated with them regarding the registration?

A. Oh, yes, they knew about the registration. I told them about it.

Mr. Rose: It seems to me you have exhibited this before somewhere in this proceeding, and an objection was sustained. Am I correct?

Mr. Lucas: I don't know about that. Perhaps at this time I will have better luck. At least, I hope so, Mr. Rose.

Q. By Mr. Lucas: I show you a letter under date of September 20, 1934, on the letter-head of D. B. Howe & Company, addressed to J. M. Danziger, and ask you to examine it.

A. I have done so. [1526]

Q. Do you recall receiving that letter?

A. I don't recall seeing it, but it is very likely I did. It is addressed to me and I had business relations with them at about that time.

Mr. Lucas: I offer this in evidence as government's exhibit next in order.

Mr. Rose: We object to the offer on the ground

(Testimony of Jacob Morris Danziger.)

that it is *res inter alios acta*, and it relates to a purported transaction with a company that doesn't figure and cannot necessarily figure in this proceedings.

Mr. Lucas: The very first and second paragraphs, your Honor,——

Mr. Rose: Except you are assuming, that is just the point. I haven't any objection if you had the document that Howe is talking about.

The Court: What are you driving at, Mr. Lucas?

Mr. Lucas: I want to examine the witness to see whether that letter will refresh his recollection about the Securities and Exchange exhibit that is part of Exhibit 112 or 108, whatever it is here.

The Court: What is your theory? That the witness mutilated that letter.

Mr. Lucas: Not that the witness mutilated that letter at all, but it certainly has a strong possibility that D. B. Howe & Company sent this to him. At least, it is a field to inquire into. [1527]

Mr. Rose: Your Honor, it is incredible——

The Court: Wait a minute.

Mr. Rose: Excuse me.

The Court: Wait a minute. I have to have a little quiet so I can find out what it is all about.

Clerk, go around and get this letter from the witness.

I have in my hand Exhibit No. 112, about which Mr. Lucas has been examining the defendant. You will have to tell me what you are trying to do.

Mr. Lucas: The letter from D. B. Howe ad-

(Testimony of Jacob Morris Danziger.)

dressed to Mr. Danziger says: "We are returning herewith" or "enclosing herewith the Securities and Exchange Commission letter which we have photostated at no expense to you." Part of Exhibit 112 is a letter, a photostat letter of the Securities & Exchange Commission.

The Court: To whom?

Mr. Lucas: That is the point.

The Court: What is the point? What is its application in this case?

Mr. Lucas: That here, long prior to this man Carter coming into this deal, this witness now on the stand was negotiating with D. B. Howe and writing him concerning, as he says, about this Securities and Exchange——

The Court: Writing who?

Mr. Lucas: Writing D. B. Howe, the witness said he was, he had communications with him about the registration. [1528]

The Court: I am still at sea.

Mr. Lucas: There is just one more thing. Carter has preceded this witness on the stand and said with respect to that Securities and Exchange letter, that it was part of the salesman's kit that was provided him by Mr. Danziger in 1935 when he was hiring other salesmen and himself to go out and sell, and it was given to him, Carter says, in the form in which it is now, and I want to ask this witness if he has any knowledge about whether or not that Exhibit 112, referring to the Securities & Exchange thing——

(Testimony of Jacob Morris Danziger.)

The Court: 112?

Mr. Lucas: 112, is what Howe refers to in his letter.

The Court: Has he denied that he furnished this to Carter?

Mr. Lucas: I haven't asked him about it yet. I haven't gotten that far. Counsel interposed——

Mr. Rose: Yes, he has, your Honor, on my examination.

The Court: Ask him about it now.

Mr. Lucas: You are talking about the Securities and Exchange Commission?

The Court: You are talking about 112.

Q. By Mr. Lucas: Mr. Danziger, you have in mind that part of 112 which is a photostat of——

A. Yes.

Q. Do you now admit or deny that that was part of your files in 1935 when you were working out the details of [1529] this Great Eastern deal with Carter?

A. I have never seen it in that form, Mr. Lucas.

Q. You have seen it in a form with——

A. I have seen a copy of that. I got it from the Securities and Exchange Commission since this case was set for trial. I have seen a copy that they sent to me, not a photostat, but a typed copy of this letter, addressed to either the Wake or the Trinidad International Petroleum Company.

Q. We want to talk about this and your possession of it in 1934.

(Testimony of Jacob Morris Danziger.)

A. Well, as I say to you, I have no recollection of ever having seen this in that form.

Mr. Lucas: The admissibility I do not think, if your Honor please, with all due respect to Court and counsel, depends on this witness' recollection of it, if another witness says it was given to him——

The Court: It seems simple enough. You are asking him to admit or deny what Carter claimed, that the defendant furnished him this letter for his salesman's kit.

Mr. Lucas: And he denies it.

The Court: He hasn't said that yet. Ask him if in 1934 he had that particular letter and gave it to Carter.

Q. By Mr. Lucas: Did you or did you not in 1934 have that——

The Court: '35. [1530]

Q. By Mr. Lucas: ——'35 have that particular letter or facsimile thereof?

The Court: No. That particular letter. That is the one Carter said he furnished him.

Mr. Lucas: That one along with probably many others.

The Court: We are not talking about others.

Q. By Mr. Lucas: That particular one.

A. I have no recollection of ever having seen this particular letter or having given it to anybody at any time.

The Court: Now you may inquire, and you may use this to refresh his recollection.

(Testimony of Jacob Morris Danziger.)

Q. By Mr. Lucas: I show you the letter on the stationery of D. B. Howe & Company——

The Court: It speaks for itself. He has read it.

Q. By Mr. Lucas: And ask you to read it and tell me whether or not that portion of it at the top thereof, “Agreeable with your suggestions, we have photostated the letter of the Securities and Exchange Commission and enclose herewith one copy for which there is no charge,” and ask you in considering that letter in connection with this (indicating) is the Securities and Exchange photostat, which is a part of Government’s Exhibit 112, the same document that is referred to in the Howe letter?

A. Well, it is referred to in generalities. I don’t know that accompanying this letter that they sent me this particular Securities and Exchange letter. They refer to [1531] sending me a letter. Now, I don’t know whether it is in that form, I don’t visualize it at all. I can’t take my mind to seeing what was attached to this letter when it came to me. I am very sure I received such a letter, I had business dealings with these people, this letter is addressed to me at Los Angeles, and I undoubtedly received it.

Mr. Lucas: Based on the witness’ answer I ask it be introduced.

The Court: I don’t think the D. B. Howe letter should come in unless Mr. Rose wants it to come in. It was used to elicit a certain answer and that is in. If Mr. Rose wants it in I will leave it in.

Hearing nothing from him it is excluded.

(Testimony of Jacob Morris Danziger.)

Mr. Rose: Your Honor, it appears incredible to me——

The Court: Do you want it in?

Mr. Rose: I don't care, your Honor. I think it is immaterial and there is no proper foundation.

The Court: Excluded.

Q. By Mr. Lucas: Referring to Government's Exhibit No. 95 in evidence, and under the caption, "Tuesday the 6th" addressed to "Dear O T" it says, "Yours dated Sunday arrived today. As you will see from copies sent yesterday your two new inquiries came through and were promptly answered with the usual form letters. I hope for some results for us all;" can you tell me now whether or not the O. T. that you refer to there was the witness and defendant in this case, Carter?

A. Is that a letter of mine, Mr. Lucas?

Q. That is what the evidence would show.

A. What is the date of it?

Q. Well, there is no date—I will give you the entire document for examination.

A. Your question is whether I knew at the time this letter was written that the person I was addressing was Mr. Carter?

Q. Yes, is the "O. T." referred to in that letter Mr. Carter?

A. In all probability it was Mr. Carlton.

Q. In all probability it was Carlton?

A. Yes.

Q. Prior to this time had Carlton ever said any-

(Testimony of Jacob Morris Danziger.)

thing to you about the Great Eastern Natural Gas arrangement?

A. Had Carlton as Carlton, or had Carlton as Mr. Carmen?

Q. Had Carlton as anybody? Do you differentiate between them in your mind now, or do you now concede they were the same person?

A. Mr. Carmen on many occasions discussed with me the Great Eastern deal, if that is the question you are asking me.

Q. No, that isn't the question I am asking you. I asked you if you had discussed prior to this letter with Mr. Carlton.

A. There had been some correspondence with Mr. Carlton. I don't remember ever meeting anybody that had the name of Carlton. There had been some correspondence with Carlton, because he sent in some sales, after I came back from New York.

Q. Did you know that at any time Carlton was in financial trouble or that he needed financial assistance in any way?

A. If my letter indicates something on that subject I knew it at the time.

Q. You said to him as follows, in this letter: "Just wish a lot that I could send you on some money to help over the rough spot, but O. T. I have never been so strapped."

A. Evidently the letter to which that was a reply had indicated that Mr. Carlton, whatever his name was, was in some financial need.

(Testimony of Jacob Morris Danziger.)

Q. What were your beliefs then, that you were writing to Carter?

A. I was writing to Mr. Carlton, that is my memory, of all correspondence after I came back from New York.

Q. Did you have any discussion that Carlton at that time was Carter?

A. When, suspicion when?

Q. When this letter was written.

A. When was it written?

Q. I believe it was in December of 1939 from other letters attached to this exhibit. I will let you examine them.

A. If it was before Mr. Mainland told me some things I don't think I had any real suspicion.

Q. Further, in this letter: "It is a pity that we [1534] can't get organized to get a deal in Canada on TIP by means of a sub-lease." Were you writing that to Carter or Carlton?

A. My impression is that I wrote the whole letter to Mr. Carlton.

Q. Now, you don't recall when Carlton got in on this deal?

A. Some time after my return from London in September, 1937.

Q. Now, do you remember ever addressing anybody else besides Carlton with the salutation "OT" or "Old Timer"?

A. Well, it may be that I addressed somebody that I thought was Carlton who was somebody else.

Q. How would that be?

(Testimony of Jacob Morris Danziger.)

A. Well, if when I was writing to Mr. Carlton he was, in fact, somebody else, I would say that I was addressing whoever that somebody else is.

Q. Let's turn to the McCoy transaction. Do you recall that you gave back any money to Mr. McCoy?

A. I did not give him back any money.

Q. You understood from Mr. McCoy's correspondence with you that he felt that he was swindled in this deal, didn't you?

A. I understood fully what his contentions were, they were all in writing in letter form and I received them.

Q. And you understood from his letter that he [1535] definitely made a request for you to return the money?

A. Well, I remember some threat about returning some money, Mr. Lucas. I don't know whether it was a request or not, but it was in written form, and you have the letters here.

Q. Did you have any suspicion during this exchange of correspondence between yourself and Mr. McCoy that the Baker who called upon McCoy was, in fact, Carter?

A. No, I don't think I got any suspicion that far back, but I don't know when my first suspicion came. It is a thing that grew until finally I had it 100 per cent confirmed in the court room, and pretty well confirmed from things that Mr. Mainland told me as time went on over a period of a year or more of examinations and questions that he was asking

(Testimony of Jacob Morris Danziger.)

me and information that he was giving me concerning this Trinidad deal.

Q. Did you make any independent investigation after the McCoy transaction occurred to determine——

A. I think I wrote Carlton and asked him if he could find out which one of his men was calling upon Mr. McCoy.

Q. Did you at that time know that Carlton had men in the field?

A. I knew that he had because it was obvious that some men in the field other than Carlton had been calling on Mr. McCoy. And if I remember correctly, there was something in McCoy's correspondence about Winslow, and, of course, I knew [1536] Mr. Winslow was working on the matter, because I met him in New York.

Q. Did you write to Winslow?

A. I may have; I don't know.

Q. Have you any copies of any letters that you sent to Winslow?

A. Unless they are in that file that Mr. Mainland has got of mine.

Q. Who is this fellow Edwards who was your Eastern representative?

A. I would ask you, Mr. Lucas. I don't know who he was.

Q. Did you ever meet him? Did you ever meet Edwards? A. No.

Q. Was he, in fact, an Eastern representative of yours?

(Testimony of Jacob Morris Danziger.)

A. As any salesman that was working on this transaction was a representative in the sale of Wake stock to the Great Eastern stockholders.

Q. Was he a salesman?

A. That was my impression.

Q. On what do you base it?

A. On something somebody said to me on the subject or wrote to me on the subject, or some information that had come in. My guess is that Mrs. Pierce mentioned his name in one of her letters. I remember that.

Q. Yes—not Mrs. Pierce, you mean Mrs. Parsons, Mr. [1537] Danziger?

A. Mrs. Parsons. I am sorry, I still get those two names confused.

Q. You wrote Mrs. Parsons, didn't you, at one time, as follows: "We have your letter of the 5th instant. Mr. Edwards can be addressed through this office at any time"?

A. I think I wrote such a letter.

Q. Was that a fact?

A. Yes, if Mrs. Parsons sent a letter in to Mr. Edwards we would probably have sent it on to Mr. Carlton and told him to deliver it to Mr. Edwards whenever he phoned him where he was. We didn't know where the salesmen were or what their addresses were.

Q. Edwards wasn't around Los Angeles here?

A. I never met anybody with the name Mr. Edwards.

Q. Bearing in mind that this letter to which I

(Testimony of Jacob Morris Danziger.)

have just referred is dated February 8, 1938, and that you corresponded with Mrs. Parsons prior to your departure from England in 1937, and that you discussed the Parsons transactions with Mr. Carter upon your arrival in New York, did you from all of that come to any conclusion that Edwards might be Carter?

A. I had no suspicions when I met Mr. Carmen the last time in New York that Mr. Edwards was anybody but Mr. Edwards or Carmen was anybody else but Carmen or Carter.

Q. There has been some testimony here and statements [1538] of counsel regarding the four registration counts in this indictment. I believe in your sworn testimony, Mr. Danziger, you said that you had examined the Securities Act and had come to a conclusion that you had a right to offer this Wake stock in the manner in which it was offered without any registration statement or file; is that true?

A. Well, I don't know that I testified to that, but that is a fact.

Q. You believe that you had a right to offer it without having a registration statement on file?

A. Yes, I have taken that position at all times.

Q. That position was based upon an examination by you of the Securities Act, was it not?

A. That and other things. I think I asked some hypothetical—do you want me to finish, Mr. Lucas?

Q. Yes, go right ahead, I don't want to interrupt your answer.

(Testimony of Jacob Morris Danziger.)

A. I think I asked some hypothetical questions of the Federal Trade Commission at or about the time that the registration took place as to whether the Wake Company would have a right to sell its privately owned stock.

Mr. Rose: Talk up, Mr. Danziger, I want to hear this too.

The Witness: I finished my answer.

Mr. Rose: You better read it to me. [1539]

(The answer was read.)

Q. By Mr. Lucas: I show you, Mr. Danziger, a pamphlet copy of the Securities and Exchange Commission Act, and ask you if you will refer to any section therein which you claim or asserted as a basis for your contention that no registration statement is necessary.

A. Well, the Act itself says, first, that——

The Court: I don't see why you are going into this.

Mr. Lucas: The Court has expressed a reservation——

The Court: I have to decide the question, not Mr. Danziger, not Mr. Rose, not you.

Mr. Lucas: That's right.

The Court: And whether he decided rightly or wrongly, it happens to be that I am the one who has to decide it, and I don't see any point in examining Mr. Danziger as to his legal view on the question whether or not this particular stock has to be registered.

Mr. Lucas: I shall be very happy to abandon

(Testimony of Jacob Morris Danziger.)

the line of inquiry, if the Court please. That will be all, your Honor.

Mr. Rose: Shall I proceed, your Honor?

The Court: Yes.

Redirect Examination

By Mr. Rose:

Q. You were asked on cross examination here, Mr. Danziger, whether in the year '37 upon your return from England you were confident that the Trinidad properties were [1540] really valuable and that the necessary finances could be had in England. And I think that you indicated that you still are of that opinion. Have you at all times since your return from England been endeavoring to carry on the financing of the drilling of the Trinidad properties in Trinidad?

A. I have continuously done so.

Mr. Rose: I have a group here which I will place in your custody here and I will start them in chronological order.

Mr. Lucas: I wouldn't know any more about them after looking at them, so you go right ahead.

Mr. Rose: Very well. You don't want to read them?

Mr. Lucas: No, I do not care to read them now.

Q. By Mr. Rose: I show you a letter bearing date 9th of June, 1938, from Birkdale, Lancaster, and ask you in what manner did that come into your custody.

A. That is a letter from Mr. R. W. J. Suther-

(Testimony of Jacob Morris Danziger.)

land that was mailed to me in the mails and received at or about the time it should have been received in the ordinary course of the mails, and it had with it the attached two letters or exhibits whichever you want to call them.

Q. You received them in the same form in which *you* are now?

A. I did, and I have taken them from my file.

Q. And were you carrying out at that time the negotiations therein reflected? [1541]

A. I was.

Q. You read the next one in order.

Mr. Rose: I offer this in evidence as Defendant's next in order.

The Clerk: DD.

The Court: Admitted.

(The document referred to was marked as Defendants' Exhibit DD, and was received in evidence.)

Q. By Mr. Rose: We have the letter on the H.M.S. Petroleum Company Limited, London, letter-head, dated October 14, 1938; in what manner or form did you receive this?

A. I received that in the ordinary course of the mails, it was signed by Mr. Sutherland, and I received it at about the date I should have received it in the mail.

Q. And that is the true signature of R. W. J. Sutherland?

A. That is. It is well known to me.

Q. Will you examine the next one in order?

(Testimony of Jacob Morris Danziger.)

The Court: These will all be admitted as they are offered.

Mr. Rose: I offer this one, your Honor.

The Clerk: EE.

(The document referred to was marked as Defendants' Exhibit EE, and was received in evidence.)

Q. By Mr. Rose: I have here now a letter on the [1542] H.M.S. Petroleum Company letter-head from London, December 9, 1938; in what manner did you receive that communication?

A. I received that in the mails, in the ordinary course of the mails, at or about the time I should have received it, and it bears the signature of Mr. Sutherland. His signature is well known to me.

Q. Will you examine the next one in order?

The Clerk: FF.

Q. By Mr. Rose: I have now a letter of the 12th of January, 1939, on the letter-head of R. W. J. Sutherland & Company from London; in what manner did that come into your possession?

A. I received that in the mail in the ordinary course of the mail at or about the time I should have received it. It bears Mr. Sutherland's signature, it is well known to me, and I produced it from my files.

Mr. Rose: I offer it next in order.

The Clerk: GG.

(The document referred to was marked as Defendants' Exhibit GG, and was received in evidence.)

(Testimony of Jacob Morris Danziger.)

The Court: Mr. Lucas, I think you better have available at such time as I may be prepared to hear from you the expert on the registration counts, whom you had here yesterday, I believe.

Mr. Lucas: Yes, your Honor.

The Court: You better get him in the court room. I [1543] don't know just when, but some time this afternoon——

Mr. Lucas: I will send for him immediately.

The Court: As I say, I don't know when, but I want to dispose of that question.

Q. By Mr. Rose: I have a letter on the letter-head of H.M.S. Petroleum Company, London, dated the 28th of January, 1939; will you indicate in what manner you received that?

A. I received that in the ordinary course of the mail at or about the time I should have received it. It bears Mr. Sutherland's signature. His signature is well known to me, and I produced it from my files.

Mr. Rose: I offer this next in order.

The Clerk: HH.

(The document referred to was received in evidence and was marked as Defendants' Exhibit HH.)

Q. By Mr. Rose: I now exhibit to you a letter on the letter-head of R.W.J. Sutherland & Company from London, dated 30th of December, 1941, which appears to be in handwriting; in whose handwriting is this document?

A. That is in Mr. Sutherland's handwriting.

Q. When did you receive it?

(Testimony of Jacob Morris Danziger.)

A. I received it in the ordinary course of the mail at about the time I should have received it. It is written and signed by Mr. Sutherland; his signature is well known to me; and I produce it from my files. [1544]

Mr. Rose: Next in order.

The Clerk: II.

(The document referred to was marked as Defendants' Exhibit II, and was received in evidence.)

Q. By Mr. Rose: I have now exhibited to you on a letter-head bearing the address of 36 Oxford Road, Birkdale, Lancaster, from England, a letter in pen and ink, bearing date Saturday the 31st of January, 1942, and I will ask you how you received that.

A. It came to me in the ordinary course of the mail. I received it at about the time I should have received it. It is written in Mr. Sutherland's hand, it is written entirely by him. And I produced it from my files.

Mr. Rose: Next in order.

The Clerk: JJ.

(The document referred to was marked as Defendants' Exhibit JJ, and was received in evidence.)

Q. By Mr. Rose: I have before me in pen and ink a letter addressed to you from England, under date October 18, 1943, and bearing air mail British postage, bearing the address to you. I take it you received this in that form?

(Testimony of Jacob Morris Danziger.)

A. I received it in this envelope in the ordinary course of mail at or about the time I should have received it; it is written entirely in Mr. Sutherland's hand, except the check mark that I have on it; it bears his signature; and I produce it from my files. [1545]

Mr. Rose: Next in order.

The Clerk: KK.

(The document referred to was marked as Defendants' Exhibit KK, and was received in evidence.)

The Witness: Here are two together, Mr. Rose.

Q. By Mr. Rose: There is no point in detaching them. I will offer them as one. I have here before you, Mr. Danziger, first, a letter on the letter-head of Sutherland & Company of London, dated January 6, 1944, with an envelope bearing your address, and the postage and the cancellations from England, and one of the 5th day of April, 1944, with an envelope, showing a cancellation postmark from Southport, Lancaster, addressed to you, and I will ask did you receive these in the mails.

A. I received these letters in the mail at or about the time I should have received them in the ordinary course of the mails they are both entirely written in M. Sutherland's hand, and they bear his signature; and I produced them from my file.

Mr. Rose: I offer this next in order.

The Clerk: LL.

(The document referred to was marked as

(Testimony of Jacob Morris Danziger.)

Defendants' Exhibit LL, and was received in evidence.)

Q. By Mr. Rose: Mr. Danziger, were there, in fact, at and around the occasions indicated in the respective dates in the various exhibits that I have alluded to here from [1546] Sutherland and others, were there negotiations of that character in fact being carried on?

A. There were as reflected in the letters.

Q. I will ask you, Mr. Danziger, whether you at any time—you have read this indictment.

A. I have, sir.

Q. Whether you at any time at any place conspired with Carter, Carlton, Carmen, Roberts, Edwards, Williams, Wilson, Dawson, Baker, Carver, Callahan, Connolly, Trinidad International Petroleum Ltd., a Nevada corporation, Wake Development Company, a Delaware corporation, and W. W. Wright, to do any of the acts or things set forth in this indictment as Count 1 thereof?

A. I did not, nor with any of them.

Q. I will ask you whether on the date of May 8, 1939, or at any other date you caused to be placed in the mail the letters set forth on page 13 and made a part of Count 2?

A. I did not.

Q. I direct your attention to Count 3 and ask you whether you did on the 19th day of January, 1939, in the sale to Harry F. Pitts cause to be placed in the mail the letter or the original of the letter affixed to page 15 of this indictment and made a part thereof?

A. I did not.

(Testimony of Jacob Morris Danziger.)

Q. I now direct your attention to Count 4 and ask you whether you did on the 5th day of January, 1939, or at any [1547] other time in the sale to F. A. Russel cause to be placed in the mails the letter bearing date January 5, 1939 which is attached to page 17 of this indictment and made a part thereof? A. I did not.

Q. I ask you, Mr. Danziger, directing your attention to Count 5 thereof, whether you did on the 13th day of September, 1939, place or cause to be placed in the mails in connection with the sale to Adeline B. Skinner of certain securities referred to in said count the check, a photostat of which appears on page 19 of the indictment.

A. I did not.

Q. I direct your attention now to Count 6 and I will ask you, Mr. Danziger, whether you did cause to be placed in the mails or direct anyone to place in the mails on January 28, 1939, in the sale to E. Barrie Smith of certain securities the check, photostat of which is affixed to page 21 of the indictment? A. I did not.

Q. I now direct your attention to Count 7 and I will ask you, Mr. Danziger, whether you did on the 22nd day of May, 1939, in the sale of securities to Harry L. and Ella May Tether, or otherwise cause to be placed in the mail or direct that such act, namely, of mailing, take place of the check, a facsimile of which is set out on page 23 of this indictment and made a part thereof? [1548]

A. I did not.

(Testimony of Jacob Morris Danziger.)

Q. I now direct your attention, Mr. Danziger, to Count 8 and ask you did you on the 26th day of January, 1939, place or cause to be placed in the mails to be delivered to Michael Burns the letter of transmittal, including certain certificates, facsimiles of which in the form of photostats are affixed to and attached to page 25 of the indictment and made a part thereof? A. I did not.

Q. I now direct your attention to Count 9 of this indictment, Mr. Danziger, and ask you whether you did on the 18th day of May, 1939, or at any other time cause to be carried in the mails the originals of the exhibits which are attached to page 27 of the indictment and made a part of the allegations thereof. A. I did not.

Q. I direct your attention now to Count 10 of the indictment, and ask you whether you did on the 20th day of February, 1939, or at any other time direct or instruct or cause to be placed in the mails of the United States the letter or certificates alluding to the transaction with one Harry F. Pitts, facsimiles of which in the form of photostats are affixed to page 29 and made a part of the allegations. A. I did not.

Q. I now direct your attention to Count 11 of this [1549] indictment and ask you, Mr. Danziger, whether on the 4th day of October, 1939, or at any other time you caused to be placed in the mail or directed that it be placed in the mail the original, a facsimile of which is attached to page 31 of the indictment and made a part of those allegations.

(Testimony of Jacob Morris Danziger.)

A. I did not.

Q. I now direct your attention, Mr. Danziger, to Count 12 of this indictment and I ask you whether you did on the 14th day of March, 1940, place or cause to be placed in the mails in Los Angeles or anywhere else the envelope, that is, the original of the envelope, and the letter, the contents in the form of photostat copy and of the envelope being attached to page 32 of the indictment and made a part of those allegations.

A. I did not.

Q. I now direct your attention to Count 13 of the indictment and I will ask you, Mr. Danziger, whether you on the 7th day of March, 1940, or at any other time cause to be placed in the mails of the United States to be delivered to the Philadelphia National Bank or any other bank, or gave any instructions in that connection to any person, to place in the mails the original of a check a photostatic facsimile of which is attached to page 35 of the indictment and made a part of the allegations therein.

A. I did not.

Q. I will ask you, Mr. Danziger, calling your attention [1550] to Count 14 of the indictment whether you did on the 8th day of May, 1939, or at any other time direct or cause in any manner to be placed in the United States mail the check, the original of the photostatic facsimile which is affixed to page 37 of the indictment and made a part of those allegations.

(Testimony of Jacob Morris Danziger.)

A. I did not.

Q. I direct your attention now, Mr. Danziger, to Count 15 of this indictment and I ask you whether you did on the 19th day of December, 1940 direct or participate or instruct anyone or anybody in any manner to be placed in the mails of the United States the original of the check, a photostatic copy facsimile of which is attached to page 39 of this indictment and made a part of those allegations?

A. I did not.

Q. I now direct your attention to Count 16 in the indictment and ask you whether you did on the 26th day of January, 1939, in any manner cause to be placed in the mails or instruct or authorize the placing in the mails of the original of a letter, a photostatic copy of which is affixed to page 41 of the indictment and made a part of the allegations therein?

A. I did not.

Q. Alluding, now, Mr. Danziger, to Count 17 of this indictment, I will ask you whether you with any other person, or the officers of any corporation or parties of any company [1551] conspired to violate Section 17 (a), Subdivision (1) and Section 5, Subdivision (a) Part (2) of the Securities Act of 1933 as amended, or the statutes in 15 U.S.C. Section 77q Subdivision (a) Section (1) thereof and e Subdivision (a) Section (2) and Section 215 of the Criminal Code of 18 U.S.C., Section 338.

A. I did not, and we did not.

Q. You better follow me on the reading of this, because there are certain things here you ought

(Testimony of Jacob Morris Danziger.)

to follow me on particularly. It states here: On or about the 2nd day of July, 1940, at Los Angeles, that is so-called overt act No. 2, page 42, you withdrew from the bank account of Wake Development Company by a check signed by you the sum of \$625.00.

Would it be better if I show you those checks?

A. If it is to be read that I personally withdrew the money, I say I did not. The Wake Development Company withdrew some money.

Q. I am asking you whether you did personally.

A. Not personally, no.

Q. The Wake Development Company did withdraw the money mentioned there as overt act No. 2?

A. I am sure that the Wake Development Company withdrew some money at that time, assuming that those figures are correct, I haven't them in my mind. If you have the checks here—— [1552]

Mr. Rose: Would it be better, your Honor, if I——

The Court: No. I would like you to finish now, Mr. Rose.

Q. By Mr. Rose: There is overt act No. 3 on page 43, which alleges that on the 2nd day of July, 1940, you using the alias Levy purchased for cash a Western Union money order in the sum of \$625.00.

What have you to tell us about that?

A. Well, I didn't use the alias A. Levy. I did purchase some money orders in the name of Mr. Levy as indicated there.

Q. I will ask you in respect to overt act No. 4

(Testimony of Jacob Morris Danziger.)

whether you did on the 21st day of September, 1939—it says here that the Wake Development Company received from Adeline B. Skinner the sum of \$300.00, do you have that particular item that has been marked here in evidence in mind?

A. Yes, I think we did receive it.

Q. On or about September 22, 1939, it is alleged that you caused the sum of \$230.00 to be withdrawn from the bank account of the defendant Wake Development Company by a check payable to cash.

A. Wake Development Company caused that amount to be withdrawn by a check made to cash.

Q. Overt act No. 6, it is alleged there that on the 22nd day of September, 1939, in Los Angeles you using the [1553] alias A. Levy purchased for cash a Western Union money order in the sum of \$180.00.

A. I personally, not using any alias, but in the name of A. Levy, purchased the Western Union money order with cash.

Q. I will ask you with respect to overt act No. 7 whether you on the 7th day of December, 1938, using the alias T. Mack purchased for cash a Western Union money order in the amount of \$102.56 payable to George Carleton.

A. I purchased that draft in the name of Mr. T. Mack.

Q. Referring to overt act No. 8 did you on the 26th day of December, 1940, using the alias A. Levy, purchase six United States postal money

(Testimony of Jacob Morris Danziger.)

orders in the aggregate amount of \$530.00, payable to George Carleton?

A. I purchased those money orders in the name of A. Levy.

Q. I ask you whether on the 12th day of August, 1940, you, using the alias A. Levy, purchased for cash a Postal Telegraph money order in the sum of \$646.58, payable to Mr. George Carleton?

A. I purchased that money order in the name of A. Levy.

Mr. Rose: That is as far as I am going into that phase of the indictment. I may during the recess take a glance and see if I want to present anything else.

Mr. Rose: All right, Mr. Rose. [1554]

(A short recess was taken.)

Mr. Rose: You may cross examine.

Mr. Lucas: No cross examination.

Mr. Rose: Step down.

(Witness excused.)

Mr. Rose: The defendants rest.

The Court: Any rebuttal?

Mr. Lucas: Now, your Honor, Mr. Black came down here and he is right here, he is out in the hallway; I didn't understand from your Honor whether or not——

The Court: What I want to know now is whether you have any rebuttal?

Mr. Lucas: Yes, I expect to put him on as an

expert to rebut that matter, or have him answer any questions that your Honor wants.

The Court: Have you any rebuttal testimony?

Mr. Lucas: No, I have no rebuttal testimony. I only have my expert.

The Court: The case is closed.

Mr. Lucas: Yes.

The Court: I will hear you, at Mr. Lucas' request, on the law point on the registration counts.

Mr. Lucas: Mr. Black does not know anything about the merits of this case.

Mr. Rose: His Honor said he would hear him on the point of law. [1555]

The Court: Wait a moment, Mr. Rose; I am running this show.

I will be very grateful for that. I have certainly heard a lot about the merits of it from you gentlemen, and he can make it just as brief as he wants to.

Mr. Lucas: Will you address the Court?

Mr. Rose, this is Mr. Horace Black of the Securities and Exchange Commission.

Will you address the Court?

The Court: The question is whether or not he knows enough about the merits of this particular question, whether or not the stock issued to Wake and owned by Wake was subject to registration. He is advised on that, isn't he?

Mr. Lucas: In a general way.

Mr. Black: If the Court please, I am not advised as to the facts in this case.

The Court: How could you be, unless you gave

it at least three weeks? I have been here listening to them for three weeks. It would take at least three weeks. It has me.

What I want to know is whether or not under the Federal Securities Act the stock which the Wake Development Company held, and spoken of here as privately owned stock, and which was issued to them—was it not prior to 1933?

Mr. Lucas: It was issued to them prior to the going into effect of the Act. [1556]

The Court: It became their property prior to the Act?

Mr. Lucas: Yes, it became their property before; but then, thereafter, it was sold to and reissued by the Wake Company to other persons more than sixty days after it was issued to them.

The Court: It was issued to them in 1931?

Mr. Rose: '33, your Honor.

Mr. Lucas: '33.

The Court: When in '33?

Mr. Rose: Before the enactment.

The Court: I want to get this sixty days nailed down, whatever that has to do with it.

Mr. Lucas: I will stipulate it was issued to them in June, '33, according to the Trinidad or Wake Development Company records which are on file or in evidence.

The Court: What has the sixty days got to do with it?

Mr. Lucas: Because it is mentioned in this law, your Honor.

The Court: In what?

Mr. Lucas: The law. That is the gist of this whole thing. Section 3 (a)(1) has that very provision in it.

The Court: It says what?

Mr. Lucas: "Any security which, prior to or within sixty days"—let's start from the beginning.

"Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the [1557] following classes of securities:

"(1) Any security which, prior to or within sixty days after the enactment of this title, has been sold or disposed of by the issuer——"

The Court: I get your point. This was sold after sixty days after the enactment of the Act?

Mr. Lucas: Yes.

"* * * but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days."

And that is the point Mr. Rose didn't mention to your Honor.

The Court: You are going to claim Wake is an issuer and/or an underwriter?

Mr. Lucas: That's right, and that they sold the stock.

The Court: We know about the sale of the stock, there is no argument about that.

Mr. Lucas: And therefore this limitation put in here——

The Court: Forget the limitation. You are going to claim under the Act they were an issuer and/or underwriter?

Mr. Lucas: That's right; and that the Act as interpreted by the Securities and Exchange Commission covers every sale unless it is specifically exempted under the terms of the Act.

The Court: Now, do you get the thing I want you to talk about? A company was the owner, a corporation was [1558] the owner of shares of stock of another corporation, which it had acquired prior to the enactment of the Securities Act, see?

Mr. Black: Yes, your Honor.

The Court: And it sold it thereafter by a general offering throughout the country, through salesmen. That is the government's claim. Now, whether or not the privately owned stock thus sold generally throughout the country is subject to registration requirements.

Mr. Black: If your Honor please, perhaps I might make my position or make the situation a little clearer if I make a very brief general statement with reference to the registration provisions of the Act.

The Court: All right.

Mr. Black: And if the Court prefers, I should like to do that, and then if the Court would like to ask me any questions as we go along, perhaps that might be the best way to proceed.

The Court: You might keep this in mind, this is a criminal prosecution and the defendant is entitled to the benefit of every reasonable doubt, and that includes doubt as to law as well as fact, at least as far as I am concerned, I am the trier of both here, and if you have any citations where

the Act has been construed as to registration provisions in support of the government's contention they are welcome.

Mr. Black: If your Honor please, I haven't any citations [1559] with me because I didn't understand the Court desired citations in connection with it, but I will be very glad to furnish the Court citations in connection with it if they are desired.

The Court: We will have to have them right now.

Mr. Black: Then, proceeding along in general, the Securities Act of 1933, specifically Section 5 of that Act, requires the registration——

The Court: Do you want me to follow you? Someone has put up here a copy of it.

Mr. Black: Yes, if you please. I gave that to your Honor; I brought it down specially because it would be easier to follow.

The Court: I thought maybe Jehovah's Witnesses brought me some literature.

Mr. Black: In general Section 5 requires the registration of all securities that are sold, offered for sale, or delivered after sale by the mails or by any means or instrumentality of Interstate Commerce, unless an exemption from registration is applicable.

There are exemptions from registration provided in Section 3. That is found, your Honor, on page 4, commencing on page 4 of that compilation. There are exempted securities provided by Section 3. There are exempted transactions provided by Section 4 of the Act, which is found on page 6.

Now, if your Honor will refer to Section 4, the first [1560] clause of Section 4 (1) exempts from registration transactions by any person other than an issuer, underwriter, or dealer. So, then, if a person selling securities is neither of those three the transaction would be exempt. However, the term "underwriter" is defined commencing on page 3 of the Act, Section 2 (11), and that term is defined to mean any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, and so forth.

So if a person offering securities comes within that definition, and your Honor notes how broad that definition is, then he would not be entitled to the first clause, exemption under Section 4.

Now, referring to Section 3, commencing there on page 4, the first sub-section of that Act exempts from registration any security which prior to or within sixty days after the enactment of this title has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer or underwriter subsequent to such sixty days.

The Court: It seems to me what I want to hear you about is whether these people were underwriters within the meaning of the Act.

Mr. Black: May I call your Honor's attention to one [1561] further provision? The last sentence of the definition of the term "underwriter," which

is found there on page 4, the last sentence of that first paragraph:

“As used in this paragraph the term ‘issuer’ shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.”

I call your Honor’s attention to the provision of that definition, because if a person should buy the controlling block of stock from a corporation issuer, and then subsequently should resell that stock——

The Court: That isn’t this case, though.

Mr. Black: It has no blocks? I say I know nothing about the facts of this case.

If they acquired any of the stock, if the Court please, for distribution, if they acquired any of it to sell, to resell, then they would be underwriters within the meaning of Section 2 (11) of the Securities Act.

The Court: That will be a question of fact, I take it, that I will have to decide.

Mr. Black: Yes, if they acquired it to resell, if they acquired it for distribution from the issuer they would be underwriters, and therefore the exemption from registration afforded by the first clause of Section 4 (1) would not be applicable, because they would be an underwriter, and their [1562] transaction would, therefore, not be exempt.

The term issuer, that term is also defined, your Honor.

The Court: Yes, let me hear you on that.

Mr. Black: "The term 'issuer' means—the definition of that term is found on page 2 in sub-paragraph (4).

"The term 'issuer' means every person who issues or proposes to issue any security;* * *"

That is the general definition. There are some specific definitions with reference to particular types of securities, such as voting-trust certificates and certificates of deposit, and——

The Court: I wouldn't think that would be in this case.

Mr. Black: No. They were not that type of securities.

If your Honor would like to hear me on Section 3 (a)(2), the exemption provided for securities offered prior to——

The Court: Page what?

Mr. Black: Page 4.

The Court: I don't see why I need to go into that, because I am assuming the government's position as to the dates, that this is not the type of security issue that gets the time exemption here. I am looking at this, to state it better, just as if the company involved here had acquired the security after the passage of the Federal Securities Act.

Mr. Black: Just as if they had acquired them afterwards?

The Court: Afterwards, that is the way I am looking at it [1563] now.

Mr. Black: Manifestly, if they acquired them for distribution, for resale, after the effective date of this Act, after sixty days from the effective date,

after the effective date of the Act, then, manifestly, they would not be entitled to rely on that exemption from registration.

The Court: That seems to me to be the question I have to decide.

Mr. Black: That is a question of fact, your Honor, that I can't decide.

The Court: Of course you can't; you haven't been here the three weeks.

Mr. Black: Section 3 (a)(1), if your Honor will permit me to discuss it just a minute?

The Court: Yes.

Mr. Black: As a lawyer and judge, naturally, when you refer to the first part of that exemption, which says, "Any security"—is exempt—"which, prior to or within the sixty days after the enactment of this title, has been sold or disposed of by the issuer," and so forth, manifestly the Congress, unless they had a specific intent to make this air-tight insofar as covering all issues of securities, wouldn't have found it necessary to go ahead and make that statement about securities offered prior to the effective date of the Act, because that would not have been necessary; but what they wanted to show was a clear Congressional intent [1564] that this Act covered every offering or sale of securities by the mails or Interstate Commerce unless a specific exemption from registration was given.

The Court: I admire your zeal, but you remind me of the man from Los Angeles at the funeral, who insisted on making a few remarks when the real purpose of the meeting had been completed.

I don't mind that little bit of propaganda here, because you have been around——

Mr. Black: It was not intended that way.

The Court: Don't take me too seriously. I know the question I have to decide, and it has nothing to do with Congress. The question I have to decide is this company having acquired in 1933 a minority block of stock in another company, having sold it to the public two years later, beginning two years later, 1935, whether at the time they acquired it two years previously they acquired it for the purpose of distribution to the public. That is the question I have to decide here.

Mr. Black: If they offered the stock at that time, sir——

The Court: They offered it two years after they got it. They offered it in '33, and this case we are trying has to do with the distribution to the public in 1935.

Mr. Black: That would be a new offering, if the Court please. Assuming those facts, it would be a new offering after the effective date of the Act and the exemption [1565] afforded by Section 3 (a) (1) would not be applicable.

The Court: And it would be a new offering by them and would be subject to registration?

Mr. Black: It would be subject to registration unless there was a specific exemption applicable.

The Court: And there is no exemption applicable?

Mr. Black: I don't know the facts, your Honor.

Mr. Lucas: That is our contention, there is none applicable.

The Court: How would any individual or any company, then, being a private owner of securities, having bought them for investment—when he wanted to sell them, he would have to register?

Mr. Black: If he is either issuer, underwriter, or dealer he would not.

The Court: He would not?

Mr. Black: No.

The Court: Start over again. Take John Doe, the plaintiff is the most ordinary person we can think of, and he happens to have some money and he has—let me put it a little better. John Doe is the owner of a business that he has built up over his lifetime, and he incorporated it, and as he gets in the later years of his life he wants to convert part of his stock holdings into money, see?

Mr. Black: Yes.

The Court: And he goes and hires himself some salesmen, [1566] doesn't go down to Spring Street and deal with anybody, nothing fancy about it, he hires himself some salesmen of his own and he tells them to go out in his own town where he is known and where his business is known and bring him in \$50,000.00, would you have to register that?

Mr. Black: I assume from your statement, your Honor——

The Court: That is not an unusual thing.

Mr. Black: I assume from your statement that John Doe acquired all the block of stock.

The Court: He owned it, he built up the business.

Mr. Black: He owned all the stock?

The Court: Yes.

Mr. Black: Therefore he would be a controlling person within the definition of the term underwriter, therefore he would be an issuer within the meaning of the last sentence of the definition of the term underwriter.

The Court: Supposing he was a minority stockholder in that company and wanted to do that same thing, sell his own property, his minority interest in that company, and employ his own salesmen to do it?

Mr. Black: And he was not in control of the company?

The Court: He was a minority owner of the stock in the company, that is all he had in the company, answering your question as to control, not answering you in the terms you are asking, he was a minority stockholder in a certain company.

Mr. Black: And he would not be in control. Then [1567] transactions of that nature, where there is no element of control involved, your Honor, he would not have to register, because he would be neither issuer or underwriter or dealer.

The Court: How do you distinguish that from this case, Mr. Lucas?

Mr. Lucas: In this case we rely, if the Court please, upon the testimony of Mr. Danziger who says that with respect to the Trinidad International he had all of its stocks, records, or anything else that it had, it had no bank book or money; that he was the controller of Trinidad International,

he was the dominant figure, and that without regard to stock ownership he controlled it. That is manifest not only by the testimony of Mr. Danziger taken by Mr. Mainland, the sworn testimony, but that is manifest, further, from the testimony of Mr. Danziger with respect to the deal made with the Great Eastern Company in the hotel in New York when he, for the Trinidad, as demonstrated by one of the government's exhibits here in the '90's, the contract, entered into a deal with the Great Eastern where he sat as the dominant figure for Trinidad, and at the same time the dominant figure for Wake.

So we say that your Honor's illustration, while correctly pointing out that the stock ownership by Wake was a minority amount of stock, yet Danziger in his sworn testimony before the Securities and Exchange Commission said that he was everything in Trinidad. So that there is that element of [1568] control, that is our answer to that.

Mr. Black: That is correct, your Honor. The control does not necessarily depend on stock ownership or the percentage of ownership. Many other factors can enter into it.

The Court: I see. I am much obliged for you coming down here.

Do you want to be heard any more on the facts in this case?

Mr. Lucas: Not unless your Honor designates some specific fact you would like me to be heard on.

The Court: You are going to waive opening argument?

Mr. Lucas: I am.

The Court: Mr. Rose, do you want to be heard? I know you all want to be heard, but do you want to be heard at some length on the facts?

Mr. Rose: No. I think your Honor has this evidence in mind better than I have. I would like to give you a few observations if you permit it.

The Court: Do you want to do it this evening or is it too late for you to begin this evening?

Mr. Rose: Frankly, your Honor, it would be better if I could, in addressing your Honor, briefly, on the facts allude to some authorities that are somewhere in this maze of papers of mine.

The Court: Do you think you could finish tomorrow [1569] morning?

Mr. Rose: Yes.

The Court: I now rule on the motion to strike the registration counts. I strike them. The registration counts are stricken from the case and a finding of not guilty will be entered on them, or whatever the appropriate finding is. That leaves the other questions.

You are waiving opening argument, and I will hear Mr. Rose tomorrow morning at 10:00 o'clock. If you think you need more time, we will start earlier.

Mr. Rose: I don't think I will take more than an hour.

The Court: Will an hour be adequate for you to finish?

Mr. Lucas: I can finish my closing remarks in an hour.

The Court: I find people usually underestimate their time. Wouldn't it be a good idea to start 9:30 in the morning so as to be sure you won't run into Saturday afternoon. I will leave it entirely to you.

Mr. Rose: May I ask your Honor—it might help me in shortening the observations—is there any particular phase of this you would like to particularly hear?

The Court: I have no questions to ask.

Mr. Rose: Your Honor, this is not a jury case. I don't think I could enlighten you.

The Court: The paper said you both talked for three days.

Mr. Rose: I don't follow the papers. [1570]

The Court: After three days of argument a motion for a directed verdict was made.

I asked you purposely at that stage of the case to discuss the facts and law, and you did. I am not restricting you, Mr. Rose. You prefer to begin at 10:00?

Mr. Rose: Yes. And I will finish at 11:00 or earlier.

The Court: Very well. And you may finish earlier if you want to.

(Whereupon, at 3:50 o'clock p. m., Friday, February 2, 1945, an adjournment was taken until Saturday, February 3, 1945, at 10:00 o'clock a. m.)

Los Angeles, California,

Saturday, February 3, 1945, 10 A. M.

The Clerk: 15173 United States vs. Danziger.

Mr. Lucas: Ready for the government.

Mr. Rose: Ready to proceed.

The Court: Before Mr. Rose begins to speak this should be put on the record. In the early stages of the case, when the government began to introduce its documentary evidence, and before it had produced its corroborating witnesses, objections were made to the introduction of certain of the documentary evidence and it was received subject to being connected up. All documentary evidence which has been received at the trial in that manner shall be deemed to have been received and treated as competent for all purposes except where it may have been specifically rejected. I don't know that there are any such cases that came in provisionally and were later specifically rejected, but if there were those occasions speak for themselves, and in all other cases the reception of the evidence will be deemed to be full and complete for all of the purposes for which it was offered by the government, with exceptions to the defendants in cases where they were taken.

Mr. Rose: May it please your Honor, and counsel for the government: Your Honor will recall at the very beginning of this proceeding here I resisted the motion of the government to sever the proceedings against the defendant [1573] Warren, and I wanted your Honor to know that I seldom,

knowingly, ever resorted to a legal contention without having some authority for the position taken. In the back of my mind at that time lurked the opinions of Wharton, whom we all recognize as an authority on this subject. He says:

“An accomplice is always a competent witness for the prosecution, although his expectation of pardon depends upon the accused’s conviction, except where he is actually under trial jointly with his confederates, and in such case the evidence of persons accused jointly applies.”

In other words, there is a distinction, as your Honor knows. Here he makes the clear-cut statement:

“Accomplices jointly indicted and jointly tried are not competent witnesses against each other.”

I wanted your Honor to know what I had in mind at the time. We have it here in unequivocal language coming from Wharton, whom I, at least, regard as an outstanding authority in the realm of this form of law.

I wanted to discuss, firstly, a few legal concepts I have here before me from my library. *Corpus Juris Secundum*, Volume 92, Page 1291, there is this comment under sub-caption “Discretion of the Court”:

“The extent to which the declarations of conspirators are admissible against others involved in the same conspiracy is to a great extent within the [1574] discretion of the trial court.”

“Acts and declarations of one co-defendant in the presence of another, which have a legitimate

bearing upon the crime which was afterward committed, are admissible against such other.”

You will note there, your Honor, and they cite some Federal cases here, it is the locale where the acts are committed. For example, I have here an observation—I will get to that presently.

Now, reading from page 1292 under the caption “Necessity of Evidence of Conspiracy.” It is declared:

“The conspiracy must be established before the acts and declarations of a co-conspirator are admissible against the accused, and the latter’s connection with the conspiracy must be made out.

“In order that the acts or declarations of an alleged conspirator may be admissible against an alleged co-conspirator, the existence of the conspiracy must be shown; it also must be shown that the accused against whom the evidence is offered was a party to such conspiracy. The same rule applies to acts and declarations of one charged as an aider or abettor of accused.”

Now, under “Nature of Proof Required” at page 1296 we find the following:

“There must, as a rule, be proof of a conspiracy apart from any acts or declarations of the co-defendants [1575] or of the alleged conspirators, for, it is held that the conspiracy cannot be established by the acts and declarations of co-conspirators done or made in the absence of, or without the knowledge of, accused. Indeed, according to some authorities the acts and declarations of co-defendants are not even admissible on the issue of the ex-

istence of conspiracy, although there are also quite a number of well considered cases supporting the view that such acts and declarations may be considered in connection with other proof."

I now turn to page 1298 under the sub-section of "Weight and Sufficiency of Evidence." Here we find:

"The declaration of an alleged conspirator made outside the presence of accused is not, alone and uncorroborated, sufficient prima facie proof of the existence of a conspiracy."

That brings to mind, your Honor, the case that is in 40 Federal Sup. 399 (United States vs. Cunningham), which holds:

"Where a charge of conspiracy is limited to two persons, the guilty knowledge must have been shared by both to warrant conviction of either."

I now want to briefly touch upon what we have here at page 1305.

"The general rule is that acts or declarations of co-conspirators, done or made after the termination of [1576] the conspiracy, are inadmissible against an accused conspirator * * *"

"Narrative statements of past events, made after the termination of a conspiracy, are inadmissible against a co-conspirator."

Then on page 1306 under the sub-caption:

"Acts or declarations of co-conspirators subsequent to the accomplishment of the object of the conspiracy generally are inadmissible against another conspirator, but this rule is subject to certain exceptions."

And here are the exceptions:

“Subject to exceptions, as when accused is present at the time, as stated in 768 *infra*, where the object of a conspiracy has been accomplished, the conspiracy terminates and the subsequent acts or declarations of one of the conspirators are not admissible in evidence for the purpose of showing the guilt of another * * *

Now, I want to touch on one additional point of law before I proceed to convey my thoughts, in general, on this whole subject. We have here from the case of *Bosselman vs. United States*, reported in 239 Federal, 84 the statement that: The better practice is not to place reliance upon testimony of an accomplice and require corroboration, citing 217 U. S. 509.

I don't want to resort to the academic practice of [1577] assuming that your Honor is not well familiar with these principles, but I thought it might help us in approaching a consideration of this matter to refresh our recollections on the nomenclature employed in the authorities and in cases on this particular subject.

As I look back to this panorama of evidence, matters that have been presented here, we find what? We find here, your Honor, and we can't get away from it, there isn't a word of evidence to dispute this fact, that some seven and a half million dollars went into this enterprise, this project in Trinidad British West Indies. We are not even talking about the New Mexican phase of this case. These astronomical figures are not disputed, your Honor. Here

we find a property, from some documentary evidence that we have in this record, way back before this alleged conspiracy, which shows that at a shallow depth of one of the wells on this property that you are practically getting a quality of oil in the gravity class of gasoline. Your Honor will remember the observations in 1933 in some of the documents that I have presented to your Honor, where they practically show that the quality of this is 15 per cent better than the best oil you can get in Texas. We know that Texas produces a pretty good quality of oil.

This is something that opposing counsel, your Honor, has ignored from the very beginning of this proceedings. He has started out on a false premise with disregard to [1578] facts that are documented and indisputable, and he started out, as we say, generally—your Honor knows in certain cases you have the law meets the facts, and sometimes it is attempted to make the facts meet the law, but in this case here we do know that long prior to their catching up with Warren, and knowing the facts, these charges upon which the defendants are now on trial before this Honorable Court were formulated and presented and made the issues which your Honor is now called upon to determine. They didn't know what this so-called conspiracy was. They merely surmised it. They didn't talk to Warren or Carter or what have you. All they had—and, incidentally, those documents, these letters, were willingly surrendered to them without subpoena and placed in their hands, and yet they

formulated the charges, and having formulated them they take this arch scoundrel here, by his own confession, and bring him in here and try to let him off on a charge, incidentally, to which he pleaded guilty, of which he is not guilty. The count to which he has pleaded, your Honor, he could never in my opinion as a lawyer be convicted, according to the rules of evidence and the law, if he were not to take the stand against himself on the count to which he has pleaded. He has pleaded, as I remember, to Count 17. It just goes to show the satire. Here they take an admitted scoundrel and move that your Honor dismiss sixteen counts against him, despite his perfidious line of conduct and his resort to [1579] swindling. As I say, I want to get to your Honor right now my view. I don't feel that anybody has been swindled in this case; in other words, I don't think that anybody that got \$10.00 worth of stock for admittedly no-account Great Eastern Gas shares and \$3.00 has been swindled. If your Honor has read those documents—I know opposing counsel hasn't, he wasn't even interested—you will remember the line of documents from England about some of the outstanding people in Great Britain who are discussing putting in millions of dollars in this project up to '43 here. Your Honor will remember it. He didn't even want to look at it. He is not interested. He seems to think it is a swindle, and he has assumed so on nothing, contrary to the geologist's report, and this convincing documentary material that we have here, that this is a very valuable property, that millions and millions of dollars

have been put in, and even up to last year one of the outstanding financiers of England, Sir Cory, who is internationally known as one of the outstanding capitalists of England, appears to be interested, and they formed a company, as your Honor will remember, for over a million pounds in which they are interested in developing this project.

So, where have we any evidence that anybody tried to swindle anybody by the selling to them of these shares of stock in the main for \$3.00 a share? If your Honor keeps in mind the state of this evidence here, as I say, there [1580] is over \$7,000,000.00 going into this project before Danziger takes hold of it.

Now, who is Danziger? Is he a man to be classed in the ilk or in the same classification as this man Warren? We know, and it is not disputed, that Mr. Danziger is a man who has been connected with oil projects all of his life, and projects which have yielded over almost \$2,000,000.00 in profits. Now, there is a man that you can see, from the line of exhibits that have gone in here, who is earnestly endeavoring and as he has testified here he still in his mind feels that he can put this project over.

There is another phase. The S. E. C. with all their bureaucratic ideas authorized the sale of a million dollars worth of the securities, only on the New Mexican phase, disregarding the indisputable facts that the Trinidad thing is one of the outstanding potential oil deals that has ever come to anyone's attention, and your Honor can see that as we examine these records.

We have been deprived by circumstances here, and your Honor very graciously indicated that you were going to give that consideration, your Honor will remember it, at the beginning I said if we are going to protect ourselves against the wild and haphazard declarations of this gentleman Warren we desired an opportunity to take the depositions of outstanding personalities in both Trinidad and in England so that we could produce before your Honor not the tainted [1581] evidence of a tinhorn stock salesman, but present to your Honor from outstanding individuals what this property is, and to convince the Court that so far as we are concerned the defendants that I am representing weren't interested in the form of chicanery and high powered conduct of Warren to which he has so proudly attested. And while I am talking about this, in passing let us take a look at the two personalities involved. Here we have Mr. Danziger who says, "Regardless of what a scoundrel that man is, I wouldn't be one to hurt him, and I wouldn't even give you his address if I knew it." Did he start off with the idea of corraling a number of incriminating documents and things of that kind? No. As a matter of fact, I have criticized him for even protecting this no-account scoundrel. He comes in here with pieces of paper that he has saved from the very beginning of this proceeding, long before any arrangement was made, a scrap of paper, and in common decency that exhibit that opposing counsel made such a fuss about, that letter that went out here in 1944, that "Dear Friend" letter in which he says,

“Don’t let them tell me his address, and I hope the dirty so and so’s do so and so.” Why should a man save a piece of paper that came into his possession of this character, a man with any shred of decency in his system, from a man who has tried to save his hide, and turn it over to the prosecution to be used against a man?

I don’t know what your Honor’s position is on that [1582] point, but my position has consistently been that I wouldn’t be an informer, I wouldn’t turn a man in. That is what we have law enforcement agencies for, and let them do their work. I wouldn’t, as we say in the vernacular, put the finger on anyone.

But I want to show you the type of personality we are dealing with. He saves these things. The worst you can say about this thing here is that it gives him some information to save his own hide, and what does he do? He hasn’t even the common decency to destroy it. He brings it in here and says, “Here, I am going to help you try to railroad an honest man and ruin his career and have him disbarred, and I am going to try to get off lightly here because I am going to come in and tell a lot of fabrications about what this is.”

Let’s go back to the so-called conspiracy and let’s see whether the acts of my client are acts of a criminal character and nature. Your Honor will remember there is documentary evidence here showing that an offer has been made from England to finance the drilling activities in Trinidad before Mr. Danziger departs. Now, was the so-called agreement that of a bunch of high handed henchmen? Mr. Danziger, as

the testimony shows, entered into an agreement in writing with this Great Eastern Gas Company. He goes to Delaware, there is an escrow publicly opened about this proposed sale of 20,000 shares, and the circularizing of [1583] the Great Eastern lists, is something that occurred in 1935, it was an agreement entered into openly, there was nothing surreptitious or secret about it, and, incidentally, what is it about? The Great Eastern stockholders through their very company, and the evidence shows they had about a million shares outstanding, that is, the Great Eastern Company, they circularized their stockholders and offered to pick up the Great Eastern stock that isn't worth anything, or relatively so, and give them \$10.00 worth of Trinidad securities for \$3.00. What happened then? Mr. Danziger goes over to England. The fact that he had a deal is indicated by the exhibit that the government threw in there which shows that half a million dollars of stock, treasury stock, was in fact taken up by a British financial firm shortly after his arrival in Europe, and he tells you when he came back from England he had a definite and unqualified commitment for putting up the money for the drilling of five wells. Now, these are facts.

They attempt to saddle upon us the skullduggery of this man Kramer that went out there, and what did he do? He just stole some property from a woman named Pierce. Were we particeps criminis to that? And what was the conduct of Mr. Danziger? Isn't it obvious, your Honor? That in going over to England and staying around in New York

there he was merely interested in raising sufficient funds, because what did they have to raise if the whole deal went [1584] through? If they had sold those 20,000 shares as per the original agreement, the Wake Development Company would have received \$20,000.00. Now, is that a tremendous sum of money? Your Honor notices that he had to remain in England for almost two years. It costs money. You can't go around with these personalities in England and carry on business and make trips to France and to Sicily and all these things here on a few pennies. Now, to me, the outstanding thing to show that the conscience and intentions of Danziger were unquestionably honest is that when he is told by this high pressure salesman Kramer, in the presence of Warren, "You stick around here and we can raise \$100,000.00," what does Mr. Danziger do? Does he stick around? Does he say, "All right, boys, I will stay around here," or does he stand by the position demonstrated by documentary evidence, "I am going over to Europe, I have got that phase of my plan committed to and financed in England?" So, you see if we approach this thing here from a standpoint of reason, we find that all of the conduct on the part of the defendants that I represent, in the era when opposing counsel claims this diabolical conspiracy was formed, is honorable conduct, it is good conduct. There isn't anything in the nature of a swindle there.

Here in England we find that shortly after his arrival there is an undertaking to buy, less 10 per cent commission, the shares of stock at \$5.00. And

these people here were [1585] getting \$10.00 worth of securities for \$3.00.

Now, when Danziger hears of this improper conduct on the part of Warren and his henchmen, doesn't the evidence show that there was an immediate repudiation of this authority? Absolutely an immediate repudiation. "You are all through, we don't want to have any part of you." Then if there was a conspiracy at that time wasn't it culminated then? How can you terminate a conspiracy in any better way than that? So then we have to look to what, if we want to find when this conspiracy generates? Warren, as I pointed out in the letter, says there was no necessity for any of this thing, these people have got warped minds.

Look who is talking about a warped mind.

They have got warped minds. These sales could have been made without any misrepresentation, legitimately and clean, and we would have no complaints.

Then he writes to Faulkner. We have that long three-page letter in which he promises that the transactions will be clean and unmistakable.

When does this new conspiracy formulate? According to Danziger and the evidence he doesn't see this man again except once when he is introduced by him to Winslow in '37.

Now, we have the statements of the discussions made in '37. Where is there anything in the testimony of Warren that shows the formulating of a conspiracy in '37, because certainly the so-called conspiracy of '35 has [1586] vanished. It is no

longer in existence, if it was at any time a conspiracy. Now, if the conspiracy was to do the acts that are set forth in this indictment, when was it formulated, and between whom? There isn't any evidence that your Honor can really point to, if it was done, and if it is considered to have been a conspiracy it must have been done in the nature of communications, because Danziger doesn't see him, Faulkner doesn't see him or any of these people, it is merely a matter of communications. Then we must look to the letters, and what do we find there?

Do you find in any of these letters a representation that this stock is selling or has been sold at any time for over \$5.00?

Is it a misrepresentation when the Wake Development Company sends Mrs. Parsons a copy of the Craig report? Does your Honor think that Craig report is false or is a misrepresentation? Is there anything to indicate that these various letters that have been introduced, to which opposing counsel shows no interest at all—he can't tell you right now, your Honor, what it is all about, and I think, your Honor, that is a good idea of his way of trying this case, he is not interested in canvassing the facts, he has assumed brazenly and without any right, and has advanced to your Honor the contention that anybody that bought a share of Trinidad stock was mulcted, and that has been his contention, it was a sheer swindle, and he laughs at Danziger's letter [1587] somewhere in this record which hesitates to sell a substantial block of shares for what? All they were getting was a dollar.

Now, you have in evidence here a letter from the Sutherland Company around that period in '38 where he says he will put up the money himself if he can't get some others to start sinking five wells, and he is talking about putting up \$75,000.00 in American money.

I will ask your Honor if you had shares of stock in a company with only 500,000 shares outstanding, where there has been seven and a half million dollars invested long before, with the indications of the quality of oil that is potentially possible from that development from those properties, would you sell the shares for a dollar apiece? The mining stock wasn't worth a penny, that is admitted. The fact that this cycle of peregrinating misrepresentatives going around these various little communities were getting \$3.00, your Honor must keep in mind, nevertheless, that Wake only got \$1.00. Would Danziger, a man with his enthusiasm and his ability as a man that could observe the potentialities of an oil venture with only half a million shares outstanding, would he be willing to sell shares with those potentialities for a dollar a share, unless he needed the money? As I say, counsel for the government can't conceive that Mr. Danziger may, possibly, even with his false enthusiasm, if you want to put it that way, about this [1588] project, and the promise from England as shown by documented evidence that they were going to put up the money to drill the wells, that he may not have been disposed to say, "Well, let's give this man several thousands of

these shares for a dollar apiece;'' he doesn't conceive that is humanly possible. And he doesn't care.

On what basis, on what assumption does the government's counsel justify its position that anybody that put a dollar into this enterprise was per se swindled or intended to be swindled? Has he attempted to bring in somebody to even give you an opinion of any kind at all that he thought that this property wasn't worth anything? No, they haven't even been interested in that, and yet your Honor can see by what has been presented to you as defense exhibits here, that if we had the opportunity that we have been denied here, by reason of the exigencies of the war, and by reason of having no opportunity to take depositions, we could establish to a point of demonstration the value of these properties.

I was interested in hearing Mr. Warren here after hearing Miss Skinner. Remember, she gave her testimony right here in his presence, and what did she say was the transaction? Your Honor will remember it. She said that he said that it was a good oil speculation in New Mexico. He heard her here, and yet he disregards her testimony and tells us this big yarn about how he put it over on Miss Skinner, and [1589] all that. I had that drawn up to confirm my diagnosis of the character of this personality.

As I said to your Honor, and I still mean it, I don't think that man could go out and sell A. T. & T. stock below par without misrepresenting it. I think if he went into a place and he said, "I am selling

securities," and they said, "Well, I would like to get a hold of some A. T. & T. stock at par or under," I think he would have to, in order to satisfy his quirk of mind there, resort to some kind of chicanery. I don't think he could say, "Very well, I will give you the stock, it is pretty good, it pays nice dividends," or something of the kind. That is what we have here.

As I say, your Honor, what kind of a conspiracy have we here? As I pointed out, in the first conspiracy there is a total paucity of any evidence, there isn't any attempt except the throwing out of this person who seeks some favors here, Warren. Let's take one of the phases that opposing counsel has made so much ado about, the use of aliases. According to Warren's testimony he says he never resorted to that practice until '36, so how could that have been a part of the conspiracy? But he interjected here that in his discussion, allegedly, with Mr. Danziger before this Great Eastern deal was put on, "You fellows like to use aliases, I don't care what names you use." That was a voluntary bone that he was throwing the prosecution in [1590] payment, apparently, for his willingness to try to smear us up here. And, yet, when I asked him, "When did you start using the name other than Carmen or Carter," whatever it was, and he said, "We didn't use any names until '36." That is when he started using them.

Then you have this thing to which government counsel has attached so much importance, this Carlisle or Carlton business, on cross examination, your

Honor, and I will show it to you in the record, Warren said he never used the name Carlton till 1940, that was his testimony.

There has been much ado about this business of drawing out cash and making a transmittal of money in the name of Levy. Now, I say to your Honor in all candor what difference does it make? Who was swindled or who was intended to be swindled by that horrible act? Did Mr. Danziger go out and use some flunky in making the application, or did he make that application in his own handwriting? When he was asked whether it was his handwriting, did he say no or did he hedge about it? He says a request came in that the transmittal of that money would be preferred as not coming from Wake, and that request was complied with. How can that possibly be any concern of the government of the United States? What kind of a conspiracy is that? What does it mean?

One of the cases as I remember it says: Conspiracy is a rather comprehensive offense, but we have never permitted it [1591] to go so far that every act or every mistake of a lifetime caused the object of that becoming a factor in an offense.

As I say, your Honor, I can stand up here and I can do a lot of talking, but I just wanted to present my views to your Honor. I am not going to burden the Court with anything else. I am satisfied that your Honor has heard the evidence, you have read the exhibits, your Honor knows the law, and I don't think I am going to accomplish

very much by taking up very much more of your Honor's time.

I just want to call your attention again, your Honor, to the fact that the government has established in the early part of 1936 when Danziger went over to England a financial house had, in fact, agreed to buy 100,000 shares of Trinidad stock at \$5.00 less 10 per cent commission, which is a lot more than any of the persons in this whole panorama of events were ever asked to pay or did pay.

Then, I want to point out to your Honor unless you disbelieve these documents, reputable people in England at all times even up to last year were discussing and considering the putting in of over a million dollars at times into this enterprise. As I said to your Honor, there isn't anything here that your Honor can judiciously say points to the fact that this is a worthless promotion that was developed with the object of trying to swindle a group or any people at all. I don't think anybody has overpaid anything. And if Warren and his henchmen in the course of their conduct have [1592] resorted to devices and trickery, how are we to be charged and where is there any evidence to saddle that thing upon us? I mean evidence. He has thrown in a word here, "Oh, yes, yes, I wrote him a letter".

Did you see the letter? Did you see a copy of it?

Your Honor, in that connection, let us consider the practices of that man and his habits. Hasn't he demonstrated here that he never destroys any-

thing? He has kept scraps of paper, literally, from the first time he ever met anybody in this transaction, and he has produced them and he has turned them over, and yet merely by resorting to the statement, "We wrote to them and told them all about it", that is what he wants your Honor to say is substantial and credible evidence to tie us in with his perfidious conduct and the perfidious conduct of his apparently scoundrel associates.

I say to your Honor, in closing, that your Honor must recognize that I feel I have had a tremendous responsibility here. I am representing a man who has had tremendous success in the past, a man who has dealt with millions, big projects, who has been in this community sixty years, and has been a member of the bar for over forty, and I feel that I have a responsibility, and I hope that your Honor will, in considering this case and arriving at a conclusion, consider, and I feel confident you will, what an adverse verdict in this case on your part would mean, and whether it is justified [1593] under the evidence in this case. I submit it.

The Court: Do you want to recess before you begin to talk?

Mr. Lucas: Not necessarily, unless the Court wants to.

May it please the Court and counsel, I had hoped that Mr. Rose would in his discussion of this case refer to the allegations of this complaint and the proof that was offered in support thereof, rather than talking about some far-off proposition in the island of Trinidad.

The entire approach of the defense to this case reminds me of the old prospector in Arizona who was trying to sell his claims to an eastern greenhorn, and was telling about what the claim showed and didn't show, and ended up by saying, "There is gold in them thar hills". That, apparently, is the defense here when Mr. Danziger says, "There is oil in Trinidad".

I am sure that the specious defense that has been attempted to be introduced and has been vociferously argued is not going to hoodwink this Court. Let's just briefly—and I am not going to bore the Court or consume the time of the Court with any extended argument, but let's just briefly consider this balderdash that there is proof in this record of an expenditure of seven and a half million dollars on this property in Trinidad.

First, I challenge that there was an expenditure of seven and a half million dollars. There is some testimony in [1594] the documentary evidence that seven and a half million dollars may or may not have been raised at some time, but the proof of how much was spent on the property is summed up in the promotion report of this fellow E. Cunningham Craig, who says that when he examined the property, and ostensibly and clearly by reference after this alleged \$7,500,000.00 was spent, he found two shallow wells on the property; and, yet, Danziger comes in here and takes the stand and says that he with years of experience as a producer, refiner and marketer of oil and extensive experience in the oil business, had come to the

conclusion that if he could raise \$75,000.00 he would put down five wells.

Now, I say the logical inference, your Honor, is that the \$7,500,000.00, if it was raised, was a bunk proposition, and that Danziger was only following in the footsteps of other bunks who bunked the English people as Danziger tried to and apparently failed, and did have the success in bunking the American public.

I don't care how many vile epithets Mr. Rose may apply to the witness Carter here. Many years ago I learned the old adage that if you will show me who your company is I will tell you what you are, and birds of a feather flock together.

If Danziger, as he stated in the Barbizon Plaza Hotel in New York, was that man of prodigious respectability and business integrity that his counsel would have you believe [1595] in his argument, he would not have been anxious to connect himself with a man who, at that time, at the very moment Carter met him, was traveling under an assumed name; and it isn't challenged by Mr. Danziger from the witness stand, that testimony of Carter. If Danziger had been the pure and unadulterated high minded business man that his counsel says he was, when Carmen told him that he was traveling under an alias he wouldn't have taken him.

You don't have to resort to the testimony of Carter to convict Danziger. Danziger is convicted by his own testimony taken before the Securities

and Exchange Commission, shown irrefutably in that documentary evidence.

Was Carter the only one that used an alias? Isn't it in this record here that Danziger used aliases? I don't care if he alibied by saying that "A. Levy" was his brother-in-law or "T. Mack" was somebody else, or this or that and the other, it is an alias.

Birds of a feather flock together, the close and intimate association existing between these two men prior to Danziger's departure from England, their close and intimate contact by correspondence which is proven irrefutably and beyond the shadow of a doubt while Danziger was in England, Danziger's immediate contact with this man when he came back, his writing to him of a letter that he wants to see him the minute he gets back, Danziger's own testimony; if your Honor please, in looking back at this thing from begining to end, [1596] I am surprised and amazed, really, at many features of this case.

That witness whom counsel damns and calls a scoundrel told a story here and stood up on cross examination, and that is more than I think Mr. Danziger did, and in every instance of any importance Danziger followed him on the stand and corroborated what Carter said on the witness stand, in every particular except Danziger wouldn't admit his perfidity. The story that Carter told about meeting him, about the writing of these letters and the concoction of this scheme and the writing of these rights, all of that was corroborated by Dan-

ziger when he got on the stand, every single thing. I was amazed with the coincidence of the testimony of each of them about the significant things that happened back there in New York, every detail of it is corroborated by Danziger himself, except he doesn't admit that he was a scoundrel. He wants to call Carter a scoundrel, but he doesn't want to be called one himself.

Now, just to advert briefly to these things that were said by Mr. Rose about nobody being swindled here. I am sure the Court is familiar with the law on this, and to answer what he has said about the alleged belief of Mr. Danziger in the qualities of the oil and the quantity of oil that there may be in the island of Trinidad, all of those questions have been before the courts and have all been decided adversely to the contention of this defendant in many cases. [1597] In the case of *United States vs. Oldenburg*, 135 Fed. (2d) at page 616 it is held that in a prosecution for using the mails to defraud in the sale of securities it was not a defense that the accused honestly believed those ideas disseminated by him and taught by the organization for which he solicited membership.

In the case of *Hawley vs. United States* in 133 Fed. (2) at 966 it was held that in a prosecution for using the mails in furtherance of a scheme to defraud in a sale of mining stock, even if the defendant were deluded by his own imagination, self-delusion does not justify an otherwise baseless representation to others.

Now, on this question of the acts and of co-con-

spirators, and things of that sort, those things, I take it, are so elementary as to take little, if any, refutation.

One more reference to the question of belief, so-called, in the representations. In the case of *Pandolfo vs. United States* 286 Fed. page 8, certiorari denied in 261 U. S., the Court held the fact that one engaged in promoting a business and honestly believes that it will eventually build and profitably operate a plant if it can secure the capital does not justify them in selling stock by false and fraudulent representations.

And that is just exactly what we content here, that Mr. Danziger and these people did. Regardless of Mr. Danziger's belief that there is oil in Trinidad, it is not a defense to [1598] sell stock by base and fraudulent representations as was done here. That is very simple, and the reiteration of it is like bringing coals to Newcastle.

Counsel in the early part of his argument, I don't think this morning, but in arguing his motion, said something about the proposition that the charge with respect to mail fraud in some way or another vitiated the counts with regard to the Securities Act. That has been discussed and decided adversely to his contention in the case of *Pace vs. United States* in 94 Fed. (2d) at page 591, a decision of the Fifth Circuit, where it was held as to what was within the purview of these provisions of the Securities Act as follows: That letters expressing thanks for orders for stock given to defendant's salesmen were held to sufficiently charge offenses

under the Securities Act. The demurrer was overruled in this case.

In *Linday vs. United States*, 108 Fed. (2d), a Sixth Circuit case concerning an offense under Section 17 (a) (1) of the Securities Act, the only mailing alleged was of a letter acknowledging receipt of an order to purchase the stock, and the check received in payment of the security. The conviction was upheld.

Now, I am not going to advert to the long line of authorities that we have here in support of the proposition. I think the Court has with a great degree of patience listened to the witnesses and to counsel, and I want to express my [1599] personal appreciation to the Court for the indulgence that the Court has extended to me in that regard, and show my appreciation, as well as express it, by not unduly prolonging this thing. Just one more point on that mail fraud proposition.

In the case of *Greenbaum vs. United States*, 80 Fed. (2d) 113, I think a decision to which Mr. Rose called the Court's attention, in overruling a demurrer in a mail fraud case the Court said:

"The indictment describes the scheme as a single one for the defrauding of prospective stockholders, and the fact that it states one or more incidents of the scheme which might constitute separate crimes in themselves apart from the use of the mails to promote the scheme does not convert it into two separate offenses under Section 215 of the United States Criminal Code."

That is in answer to anything that Mr. Rose

said in his motion here addressed to the Court at the conclusion of the government's case.

Unless the Court desires to be enlightened or have discussed further particulars, I want to say just in passing that I have checked and double checked the evidence against the indictment on the mailings in the counts, and every count in this indictment is supported. I have a resume here before me of the particular exhibit that is set forth [1600] in the indictment, and its reference to the exhibit in which it is found; I, therefore, say with all seriousness to your Honor that the government feels that it has proven its case beyond any reasonable doubt or any doubt at all on the twelve remaining counts that are left in the indictment, and we submit it.

The Court: Count 7 was dismissed?

Mr. Lucas: Count 7 was dismissed by the government and is therefore out; the Court, on the motion of the defendant, has ruled out Counts 8, 9, 10 and 11; therefore there is remaining Counts 1 to 6, inclusive, Counts 12 to 17, inclusive, as my notes show, your Honor.

The Court: On Counts 1, 2, 3, 4, 5, 6, 12, 13, 14, 15, 16, and 17 I find the defendants each and all guilty as charged in the indictment.

I want a pre-sentence investigation by the Probation Officer as to all of the defendants and that leaves now the question as to what immediate action, if any, should be taken in accord with the practice in this District of the defendant Danziger who is now on bail.

In my District the practice is a certain way; as I sit in other Districts I find that practice differs. The District Attorney is entitled to be heard, and I desire to hear him as to whether or not pending the pre-sentence investigation, which I will ask to be made before next Saturday, the defendant Danziger shall be continued on bail. [1601] Next Saturday morning, a week from today, at 10:00 o'clock, is the time I set for passing sentence in the case. The question on which I will now hear the District Attorney and, of course, defense counsel, is as to whether or not the defendant Danziger shall be continued on bail until that time, or whether he shall be presently committed to custody.

Mr. Lucas: With respect to that, if the Court please, I can say this, the rule, I believe, as established by the Judges in this District in a crime that is a so-called commercial crime, that is, where a defendant is convicted of a crime involving fraud or the acquisition of money by fraud, the general rule is that upon conviction and while awaiting pre-sentence investigation the defendant is incarcerated. Now, to that general rule there are admitted exceptions, and the courts here, the Judges of the respective courts here, have, to my knowledge, made exceptions to that rule, depending upon the circumstances in each particular case. As to the government's position here, and without in any way wanting to force or control the action of the Court, I will say that the government has no animus toward Mr. Danziger. The facts of the case are as thoroughly before the Court as we can give

them; he is a man of age and experience, he has been a member of the bar here for many years; and those are questions that obviously and unquestionably the Court should take in mind on the matter.

The Court: With the thought that I will give the [1602] defendant a chance to make personal arrangements, the bond will be continued pending passing of sentence in the case.

(Whereupon, at 11:05 o'clock a. m., Saturday, February 3, 1945, an adjournment was taken until Saturday, February 10, 1945, at 10:00 o'clock a.m.)

[Endorsed]: Filed March 31, 1945. [1603]

[Title of District Court and Cause.]

CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that I reported all of the proceedings had in the trial of the above entitled case, which proceedings were conducted in the court presided over by Honorable Claude McColloch on January 16, 17, 18, 19, 20, 23, 24, 25, 26, 29, 30, 31, February 1, 2, and 3, 1945, and that the foregoing volumes are a true and correct transcript of the proceedings had in the above entitled case on the dates specified in said volumes of reporter's

transcript and as hereinbefore indicated and that said transcript contains a true and correct transcription of my stenographic notes of the proceedings had on said occasions.

Dated this 2nd day of November, 1945.

SAMUEL GOLDSTEIN

Official Reporter

[Endorsed]: Filed Nov. 5, 1945.

[Title of District Court and Cause.]

This certifies that the within and foregoing transcript of testimony is a full, true, correct and complete transcript of the testimony given and taken at the trial of this cause before me, as shown by the Reporter's certificate within, not including the statement given by defendant to Inspector Mainland (Exhibit No. 92), and that original Exhibits Nos. Plfs. 1 to 115 incl. (except No. 31) and Defts. A to LL incl. hereto attached are the Exhibits offered at the trial (other than the Exhibits transcribed), and that said Exhibits may be and they are hereby certified to the Circuit Court of Appeals without transcription for the purposes of the appeal herein, and that the said transcript and Exhibits be and they are hereby settled and certified to the Circuit Court of Appeals as the Bill of Exceptions herein.

CLAUDE McCOLLOCH

Judge

[Endorsed]: Filed Nov. 5, 1945.

[Endorsed]: No. 10989. United States Circuit Court of Appeals for the Ninth Circuit. Jacob Morris Danziger, Trinidad International Petroleum, Ltd., and Wake Development Company, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California Central Division.

Filed December 10, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

At a Stated Term, to wit: The October Term 1944, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Tuesday the thirteenth day of February in the year of our Lord one thousand nine hundred and forty-five.

Present: Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding, Honorable Clifton Mathews, Circuit Judge, Honorable Albert Lee Stephens, Circuit Judge.

No. 10989

JACOB MORRIS DANZIGER, also known as
J. M. DANZIGER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER ADMITTING APPELLANT TO BAIL

Upon consideration of the motion of appellant, filed February 13, 1945, for admission to bail pending appeal, Mr. Paul Angelillo having been heard on behalf of counsel for appellant, and of the telegraphic opposition of Mr. Charles H. Carr, United States Attorney, counsel for appellee, and by direction of the Court,

It Is Ordered that the motion for admission to bail pending determination of the appeal herein

be, and hereby is granted, and that appellant be admitted to bail in the amount of Five Thousand Dollars (\$5,000.00); the surety or sureties to the bail bond to justify before the Senior District Judge of the United States for the Southern District of California, or Honorable Claude McColloch, trial judge, and the bail bond to be conditioned as required by law, and when approved to be filed with the clerk of the District Court for the Southern District of California, Central Division.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10989

UNITED STATES OF AMERICA,
Plaintiff and Respondent,

vs.

JACOB MORRIS DANZIGER, etc., TRINIDAD
INTERNATIONAL PETROLEUM, LTD., a
corporation, and WAKE DEVELOPMENT
COMPANY, a corporation, et al,
Defendants and Appellants.

STATEMENT OF POINTS ON WHICH DE-
FENDANTS AND APPELLANTS JACOB
MORRIS DANZIGER, TRINIDAD INTER-
NATIONAL PETROLEUM, LTD., AND
WAKE DEVELOPMENT COMPANY IN-
TEND TO RELY, AND DESIGNATION
OF RECORD.

To Paul P. O'Brien, Esq., Clerk of said court, and
to Charles H. Carr and V. P. Lucas, Esqs.,
attorneys for plaintiff and respondent:

Please Take Notice that the defendants and ap-
pellants Jacob Morris Danziger, Trinidad Inter-
national Petroleum, Ltd., a corporation, and Wake
Development Company, a corporation, on their
appeal in this case, intend to rely upon the follow-
ing points, to-wit:

(1) Said appellants, and each of them, adopt as points on appeal the assignment of errors appearing in the Transcript of the Record and numbered 1 to 35, inclusive.

In addition to said assignments of errors, appellants herein urge the following additional points:

(2) Error in denying the motion of the defendant Jacob Morris Danziger for a continuance by reason of the inaccessability of material records in countries foreign to the United States involved in the transactions specified in the indictment and to the impossibility of production of witnesses residing in foreign countries whose testimony would be material to the defendants.

(3) Error in overruling the objection of the defendant Jacob Morris Danziger to the appointment of his counsel, A. Brigham Rose, by order of court over objection to represent the corporate defendants Trinidad International Petroleum, Ltd., and Wake Development Company.

(4) Error in overruling each and all of the objections of defendant Jacob Morris Danziger to the admissibility as against him of the numerous exhibits, being documents and communications of Wake Development Company, a corporation, offered as against the appellants herein.

(5) Error in overruling each and all of the objections of defendant Jacob Morris Danziger to the admissibility as against him of the numerous exhibits, being documents and communications of

Trinidad International Petroleum, Ltd., a corporation, offered as against the appellants herein.

Appellants desire to eliminate numerous exhibits which were primarily received in connection with certain counts specified in the indictment which were dismissed, and appellants instead to procure if possible a stipulation for the consideration of many of the exhibits filed in this court by reference to the originals. Appellants intend by reference on the appeal to refer if necessary to the certified type-written transcript or any part thereof.

JACOB MORRIS DANZIGER
TRINIDAD INTERNATIONAL
PETROLEUM, LTD.
WAKE DEVELOPMENT COM-
PANY

By A. BRIGHAM ROSE

Attorney for said appellants.

Received copy of the within Defendants' Jacob Morris Danziger, Trinidad International Petroleum, Ltd., and Wake Development Company statement of points on which they intend to rely and designation of the record, this 20 day of December, 1945.

CHARLES H. CARR

United States Attorney

V. P. LUCAS,

Asst. U. S. Attorney,

By W. ALLEN

[Endorsed]: Filed December 22, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

APPELLEE'S DESIGNATION OF ADDI-
TIONAL PARTS OF THE RECORD

To: Paul P. O'Brien, Esq., Clerk of the Circuit Court, and to Jacob Morris Danziger, et al., and to A. Brigham Rose, Attorney for Appellant:

Please Take Notice that under Rule 19, subdivision 6, of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, the United States of America, Appellee herein hereby designates the following as additional parts of record material for the consideration of the Court in the determination of the appeal.

(1) Appellee designates the printing and inclusion in the record of the entire transcript of the testimony taken in the trial of the case.

(2) The inclusion in the printed record of the following exhibits in addition to those designated by Appellant:

(a) Government's Exhibits 1 to 36, inclusive.

(b) Government's Exhibits 38, 39, 42, 44, 46, to and including 55.

(c) Government's Exhibits 98, 99, 101, 103, 105, 106.

Dated: December 31, 1945.

CHARLES H. CARR,

United States Attorney

JAMES M. CARTER

Assistant U. S. Attorney

E. A. TOLIN

Assistant U. S. Attorney.

V. P. LUCAS

Assistant U. S. Attorney

Attorneys for Appellee.

[Endorsed]: Filed January 7, 1946. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ORDER THAT ORIGINAL EXHIBITS NEED
NOT BE PRINTED BUT MAY BE CON-
SIDERED IN THEIR ORIGINAL FORM

In the interest of economy and good cause therefor appearing, It Is Ordered that the original exhibits in above cause need not be printed within the printed transcript of record, but may be considered by this Court in their original form.

FRANCIS A. GARRECHT

Senior United States Circuit
Judge.

Dated: San Francisco, Calif., January 8, 1946.

[Endorsed]: Filed January 8, 1946. Paul P. O'Brien, Clerk.